ONTARIO
LABOUR RELATIONS BOARD
REPORTS

July/August 2009

ONTARIO LABOUR RELATIONS BOARD

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A Bimonthly Series of Decisions from the Ontario Labour Relations Board

Cited [2009] OLRB REP. JULY/AUGUST

EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

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SUBJECT INDEX

Accreditation – Construction Industry – Employer – Among other matters, the trade unions attacked the "employer authorizations" as insufficient for the applicant to rely upon – The Board read the two definitions in the Act of "employers' organization" together and found that an employers' organization "represents" an employer for the purposes of the Act in relation to an accreditation application when that employer authorizes or appoints that organization to act on its behalf in relation to the regulation of relations between employers and employees – The Board found that an employer, on becoming a member of the applicant, was bound by the applicant's constitution and from that it was apparent that every employer who was a member of the applicant at the time the application was made was, for the purposes of s. 136(1)(b) represented by the applicant – Furthermore, while the authorizations could certainly have been more explicit, the Board found that they clearly authorized the applicant to represent them in collective bargaining – The Board found that at the least eleven of thirteen employers had vested authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent – Certificate of Accreditation issued

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE LIUNA, OPDC; RE CANADIAN UNION OF SKILLED WORKERS 548

Adjournment – Bias – Duty of Fair Representation – Judicial Review – Practice and Procedure – The applicant sought judicial review of a Board decision (and reconsideration) adjourning two DFR applications pending the outcome of a scheduled arbitration – The applicant also brought a motion to have all the respondents' facta dismissed for failing to comply with the timelines in the *Rules of Civil Procedure* – The Court dismissed the motion, finding that there was no prejudice to the applicant, and he had adequate time to prepare his case – On the merits, the Court found there was no basis for the applicant's allegation of an apprehension of bias: it was reasonable for the Board to assign the same Vice-Chair to cases involving similar facts and the same parties – The Board was reasonable in adjourning the matters before it and extending the time for filing of responses – Although none of the respondents raised the issue of prematurity, the Court ruled that it would have dismissed the application on that basis as well – Application dismissed

DR. PETER A. KHAITER; RE YORK UNIVERSITY FACULTY ASSOCIATION; YORK UNIVERSITY AND OLRB 620

Bar – Certification – Construction Industry – Project Agreement – The responding parties and intervenors sought dismissal of these applications for certification, arguing that the construction labourers working on the application date were employed pursuant to project agreements that pre-dated the applications – Potential parties to the project agreement had been properly notified and no timely objection was raised -- The applicants argued that s. 163.1 applies only to projects in the industrial, commercial or institutional sectors, and the projects at issue were outside the ICI sector, so they could never be the subject of the agreements – The Board found that paragraph 1 of subsection 163.1(14) establishes that the work performed subject to a project agreement is limited by a trade union's jurisdiction, and not by a sector – Once the objection period to a project agreement has passed and the agreements come into force, sector becomes irrelevant – The project agreements were valid when the applications were made – Applications dismissed

COPE CONSTRUCTION AND CONTRACTING INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE IBEW, LOCAL 530, ET AL 537

Bargaining Unit – Certification – Construction Industry – Status – The Carpenters sought to certify employees of Struct-Con - The issue before the Board was whether certain persons should be considered employees for the purposes of determining the number of employees in the bargaining unit - The persons in question were employed by the union to assist in organizing and sought employment with Struct-Con for this purpose – Struct-Con argued that while these persons may be employees for all other purposes, they should not be considered employees for the purpose of the bargaining unit count because their overriding duty to the union (as their employer) precludes them from making a free designation of a representative – Struct-Con also argued that the individuals' employment by the Carpenters constituted undue influence on the part of the union - The Board rejected the employer's argument, holding that it was not the Board's role to assess the motives of anyone in the bargaining unit: under s.128.1(4) the Board is limited in its inquiry to whether the union represents a majority of persons in the bargaining unit on the date of application, regardless of how they got there or how they formed their opinion about being represented by the union – Accordingly, the persons in question were found to be part of the bargaining unit on the date of application – Matter continues

STRUCT-CON CONSTRUCTION LTD.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, CJA 607

Bias – Adjournment – Duty of Fair Representation – Judicial Review – Practice and Procedure – The applicant sought judicial review of a Board decision (and reconsideration) adjourning two DFR applications pending the outcome of a scheduled arbitration – The applicant also brought a motion to have all the respondents' facta dismissed for failing to comply with the timelines in the *Rules of Civil Procedure* – The Court dismissed the motion, finding that there was no prejudice to the applicant, and he had adequate time to prepare his case – On the merits, the Court found there was no basis for the applicant's allegation of an apprehension of bias: it was reasonable for the Board to assign the same Vice-Chair to cases involving similar facts and the same parties – The Board was reasonable in adjourning the matters before it and extending the time for filing of responses – Although none of the respondents raised the issue of prematurity, the Court ruled that it would have dismissed the application on that basis as well – Application dismissed

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STRUCT-CON CONSTRUCTION LTD.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, CJA 607

Certification – Construction Industry – Trade Union – The Board was asked to determine whether the Canadian Construction Workers' Union was a construction trade union within the definition set out in s. 126 of the Act - The Board identified the criteria for the determination as (a) the trade union's constitution; (b) the trade union's history, antecedents and associations; (c) the union's organizational base and collective bargaining practices, including the kinds of employees and bargaining units the union represents; (d) the union's relationship with its parent and other unions; (e) the presence of a hiring hall and/or out-of-work list; (f) whether the union represents one or more trades; (g) whether the union operates welfare, pension or training funds; and (h) whether the union aspires to bargaining rights with more than one employer – The Board held that the key criterion was the union's organizational base and collective agreement practices – The CCWU was able to demonstrate that it has two valid collective agreements and one voluntary recognition agreement – The Board found that CCWU satisfied a clear majority of the criteria – Matter continues

STARLAND CONTRACTING INC.; RE CANADIAN CONSTRUCTION WORKERS' UNION; UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183 600

Construction Industry – Accreditation – Employer – Among other matters, the trade unions attacked the "employer authorizations" as insufficient for the applicant to rely upon – The Board read the two definitions in the Act of "employers' organization" together and found that an employers' organization "represents" an employer for the purposes of the Act in relation to an accreditation application when that employer authorizes or appoints that organization to act on its behalf in relation to the regulation of relations between employers and employees – The Board found that an employer, on becoming a member of the applicant, was bound by the applicant's constitution and from that it was apparent that every employer who was a member of the applicant at the time the application was made was, for the purposes of s. 126(1)(b) represented by the applicant – Furthermore, while the authorizations could certainly have been more explicit, the Board found that they clearly authorized the applicant to represent them in collective bargaining – The

Board found that at the least eleven of thirteen employers had vested authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent – Certificate of Accreditation issued

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE LIUNA, OPDC; RE CANADIAN UNION OF SKILLED WORKERS 548

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Construction Industry Certification – Employer – The union applied for certification under s. 128.1, naming the general contractor as the employer of three electricians supplied by a sub-contractor – The union asserted that the general contractor was the employer based on an agreement signed by the general contractor acknowledging they would pay wages in order to guarantee that three electricians would continue to supply their services to meet a project deadline - The Board used the factors set out in *York Condominiums* to determine who employed the electricians on the application date – The Board found that the general contractor adopted the burden of remunerating the electricians, it was responsible for bringing the three electricians back to work after they walked off the job, and it identified and controlled what work was to be performed – The general contractor was therefore held to be the employer on the date of the application – The general contractor operates its parent corporation out of Quebec and has subsidiary corporations that operate in Ontario and the United States – The Board found that it was appropriate to name the Ontario subsidiary as the employer but gave the union 60 days to request reconsideration if it thought that the description of the employer should be more inclusive – Application allowed

RELIANCE CONSTRUCTION OF CANADA LTD. (AND RELIANCE CONSTRUCTION (ONTARIO) LTD. O/A RELIANCE CONSTRUCTION GROUP); RE IBEW Local 586 591

Construction Industry Certification – Employer Support – The union asked the Board to dismiss the application for certification submitted by another union on the basis that the employer violated s.15 of the Act by supporting organizing efforts – The Board considered whether the organizing employee was part of management and concluded that he was not in a managerial role but was in a position akin to that of a working foreman - The Board concluded that by assigning the organizing employee a role that allowed him access to a large number of employees covering a broad geographic area at a time when the competing union demonstrated an interest in organizing, it conveyed a message as to which union was preferred by the employer – The Board concluded that employees would not have been able to express their true preference between the competing unions due to the employer's support of one union – Application dismissed

MICHAEL MONTEITH ENTERPRISES LIMITED AND MONTEITH BUILDING GROUP LTD.; RE LIUNA, OPDC; RE CARPENTERS COUNCIL; UBCJA 580

Construction Industry Grievance – Discharge – The union argued that a union steward's discharge for failing to comply with the employer's safety policy was void *ab initio* because of the employer's failure to contact the union prior to the discharge, in violation of the collective agreement – The Board found that the employer's telephone message to the union regarding "an issue with fall protection" was not clear and definitive enough to alert the union to the imminent discipline; also, the notice to the union was inadequate because it did not occur before the steward was discharged – Furthermore, the collective agreement provided mandatory substantive rights to stewards – The termination of the

steward in violation of these rights rendered the discharge void *ab initio* – Grievance allowed

V.K. MASON CONSTRUCTION CO.; IBEW, LOCAL 303 613

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V.K. MASON CONSTRUCTION CO.; IBEW, LOCAL 303 613

Discharge for Union Activity – Interim Order – Unfair Labour Practice – The union sought interim reinstatement of a part-time grocery clerk, pending an unfair labour practice complaint which alleged that he was discharged for union activity – The employer claimed that the individual was legitimately terminated for misconduct and that it had no knowledge of an organizing campaign or of the employee's involvement in such a campaign – The Board found and the employer conceded that the discharge occurred during an organizing campaign and that there was a serious issue to be tried – Concerning irreparable harm, however, the Board found that the discharged employee was not instrumental to the success of the campaign and that his absence from the workplace did not effect the momentum of the organizing drive – Accordingly, the Board denied interim relief – Application dismissed

1319557 ONTARIO LIMITED C.O.B. UPPER GAGE PRICE CHOPPER; UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA)..... 513

Duty of Fair Representation – Adjournment – Bias – Judicial Review – Practice and Procedure – The applicant sought judicial review of a Board decision (and reconsideration) adjourning two DFR applications pending the outcome of a scheduled arbitration – The applicant also brought a motion to have all the respondents' facta dismissed for failing to comply with the timelines in the *Rules of Civil Procedure* – The Court dismissed the motion, finding that there was no prejudice to the applicant, and he had adequate time to prepare his case – On the merits, the Court found there was no basis for the applicant's allegation of an apprehension of bias: it was reasonable for the Board to assign the same Vice-Chair to cases involving similar facts and the same parties – The Board was reasonable in adjourning the matters before it and extending the time for filing of responses – Although none of the respondents raised the issue of prematurity, the Court ruled that it would have dismissed the application on that basis as well – Application dismissed

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MICHAEL MONTEITH ENTERPRISES LIMITED AND MONTEITH BUILDING GROUP LTD.; RE LIUNA, OPDC; RE CARPENTERS COUNCIL; UBCJA 580

Employment Standards – The applicant applied for a review of an employment standards officer's refusal to issue an order to pay for unlawful deductions – The issue for the Board was whether there was an employment relationship between the applicant and the alleged employer – The Board found that while there were some characteristics of an employer-employee relationship (work assignment, benefits, a fair degree of economic dependence), the evidence pointed to a conclusion that the applicant was in business for himself: the applicant had earlier incorporated a company for carrying on business; he provided his own vehicle as owner/operator; he was required to provide a second vehicle if his truck happened to break down; he was not restricted to working for the alleged employer – Application dismissed

1391165 ONTARIO INC. O/A WALLACE TRANSPORT AND DIRECTOR OF EMPLOYMENT STANDARDS; RE RASHPAL BINING 520

Employment Standards – The employee sought review of an employment standards officer's refusal to award him termination and severance pay – The employer asserted the employee was discharged for wilful misconduct or neglect of duty – The Board found that the employee was absent from work for an extended period without properly communicating his reasons for the absence or keeping the employer apprised of his circumstances – The Board found there were three aspects of note to the situation: (1) the employee was angry with the company for allegations of poor performance; (2) following the employee's initial brief and justified absence, the employer did not know why he was off work; and (3) the employee acknowledged that the employer had the right to seek medical information about the extended absence – The Board found the employee was unable to explain away his lack of response to the employer's repeated inquiries – Application dismissed

MAGNA POWERTRAIN INC. O/A TORAL CAST INTEGRATED TECHNOLOGIES; RE KULARAJ KULASINGAM AND DIRECTOR OF EMPLOYMENT STANDARDS 574

Employment Standards – The employment standards officer found the employer in violation of the Act by failing to pay holiday pay to the claimant employee who packed and wrapped fresh mushrooms on a mushroom farm – The narrow issue before the Board was whether the employee's work was directly related to the primary production of mushrooms, that is, did the exemption in s. 2(2) of Regulation 285 apply – The Board found that work directly related to primary production means "hands on" work which occurs on the farm or place of growing, that deals with the product in its original/raw state – The Board was also unable to rationally reconcile the Director's position that work involved in storing and transporting mushrooms which occurs on the farm but after packing, was work that is directly related to primary production, but the work of packing was not – The Board found the exemption applied and the employer was not required to pay holiday pay – Appeal allowed

HIGHLINE PRODUCE LIMITED, WELLINGTON MUSHROOM FARM; RE TAMMY FLIELER AND DIRECTOR OF EMPLOYMENT STANDARDS; RE ONTARIO FEDERATION OF AGRICULTURE 562

Health and Safety – The employer appealed an order requiring it to comply with the Industrial Regulation relating to proper stacking of drums – Lennox argued that its method of staggering two tiers of empty drums was safer than the prescribed insertion of two parallel planks between tiers, and that it met the equivalency criteria set out in s. 2 of the Regulation – The Board found that the Lennox method did not comply with the Regulation: to simply ignore the provision was not a variance – The Board was not

satisfied that the health and safety of the workers was ensured with the staggering method – Appeal dismissed

LENNOX DRUM LIMITED; RE JOEY OUIMET AND RONALD LANDRY, INSPECTOR 567

Interim Order – Discharge for Union Activity – Unfair Labour Practice – The union sought interim reinstatement of a part-time grocery clerk, pending an unfair labour practice complaint which alleged that he was discharged for union activity – The employer claimed that the individual was legitimately terminated for misconduct and that it had no knowledge of an organizing campaign or of the employee's involvement in such a campaign – The Board found and the employer conceded that the discharge occurred during an organizing campaign and that there was a serious issue to be tried – Concerning irreparable harm, however, the Board found that the discharged employee was not instrumental to the success of the campaign and that his absence from the workplace did not effect the momentum of the organizing drive – Accordingly, the Board denied interim relief – Application dismissed

1319557 ONTARIO LIMITED C.O.B. UPPER GAGE PRICE CHOPPER; UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA)..... 513

Interim Relief – Unfair Labour Practice – The Labourers argued that four employees were not recalled following a seasonal lay-off, and sought reinstatement for each – One employee was unavailable to return to work for health reasons; two were reinstated in accordance with the employer's recall policy – The Board found that the employer failed to provide direct evidence in its declaration and at the consultation to substantiate its conduct with respect to the remaining employee – After the application for certification was filed, and when the union sought to have the employee's name added to the employee list, it would have been clear to the employer that the individual was a union supporter – Failure to recall is not as dramatic as discharge, but it is unusual and leads to a logical inference that there would have been a connection between union support and the failure to recall – Irreparable harm established – Interim relief granted

ALMON EQUIPMENT LTD.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 526

Judicial Review – Adjournment – Bias – Duty of Fair Representation – Practice and Procedure – The applicant sought judicial review of a Board decision (and reconsideration) adjourning two DFR applications pending the outcome of a scheduled arbitration – The applicant also brought a motion to have all the respondents' facta dismissed for failing to comply with the timelines in the *Rules of Civil Procedure* – The Court dismissed the motion, finding that there was no prejudice to the applicant, and he had adequate time to prepare his case – On the merits, the Court found there was no basis for the applicant's allegation of an apprehension of bias: it was reasonable for the Board to assign the same Vice-Chair to cases involving similar facts and the same parties – The Board was reasonable in adjourning the matters before it and extending the time for filing of responses – Although none of the respondents raised the issue of prematurity, the Court ruled that it would have dismissed the application on that basis as well – Application dismissed

DR. PETER A. KHAITER; RE YORK UNIVERSITY FACULTY ASSOCIATION; YORK UNIVERSITY AND OLRB..... 620

Judicial Review – *Public Sector Labour Relations Transition Act* – ONA brought an application for a declaration that a "health services integration" under the PSLRTA had occurred – A fertility treatment clinic (OFC) operated pursuant to a contractual arrangement with the Ottawa Hospital whereby the hospital provided support staff, equipment, laboratory space and facilities – When OFC was moved to new premises, the employees who followed were only offered employment on the basis that they were new employees; OFC did not recognize the bargaining rights that existed in the Hospital setting – The Board held that a health services integration had occurred and exercised its discretion to declare that the PSLRTA applied to the integration – On Judicial Review the court found that the Board properly determined that the OFC was an "employer" who met the definition of "health services integration" under s. 2 of the PSLRTA – The court found OFC's argument that s. 2(b) only applies to employers who provide non health care services to the health services sector to be contrary to the plain reading of the section which states that it applies to an employer whose primary function is the provision of services within the health services sector – Additionally, there was ample evidence to suggest that there had been a health services integration (dissolution, transfer, continuance and discontinuance of services provided by the OFC as a result of its move from the hospital) – Finally, the court found the Board's decision to exercise its discretion by applying the *Act* to the integration consistent with the purposes of the *Act* – Accordingly, the Board's decision was within a range of acceptable and rational outcomes – Application dismissed

THE OTTAWA FERTILITY CENTRE INC.; RE ONTARIO NURSES' ASSOCIATION; ONTARIO PUBLIC SERVICE EMPLOYEES UNION; CANADIAN UNION OF PUBLIC EMPLOYEES; LOCAL 4000; THE OTTAWA HOSPITAL; OLRB 624

Practice and Procedure – Adjournment – Bias – Duty of Fair Representation – Judicial Review – The applicant sought judicial review of a Board decision (and reconsideration) adjourning two DFR applications pending the outcome of a scheduled arbitration – The applicant also brought a motion to have all the respondents' facta dismissed for failing to comply with the timelines in the *Rules of Civil Procedure* – The Court dismissed the motion, finding that there was no prejudice to the applicant, and he had adequate time to prepare his case – On the merits, the Court found there was no basis for the applicant's allegation of an apprehension of bias: it was reasonable for the Board to assign the same Vice-Chair to cases involving similar facts and the same parties – The Board was reasonable in adjourning the matters before it and extending the time for filing of responses – Although none of the respondents raised the issue of prematurity, the Court ruled that it would have dismissed the application on that basis as well – Application dismissed

DR. PETER A. KHAITER; RE YORK UNIVERSITY FACULTY ASSOCIATION; YORK UNIVERSITY AND OLRB..... 620

Project Agreement – Bar – Certification – Construction Industry – The responding parties and intervenors sought dismissal of these applications for certification, arguing that the construction labourers working on the application date were employed pursuant to project agreements that pre-dated the applications – Potential parties to the project agreement had been properly notified and no timely objection was raised -- The applicants argued that s. 163.1 applies only to projects in the industrial, commercial or institutional sectors, and the projects at issue were outside the ICI sector, so they could never be the subject of the agreements – The Board found that paragraph 1 of subsection 163.1(14) establishes that the work performed subject to a project agreement is limited

by a trade union's jurisdiction, and not by a sector – Once the objection period to a project agreement has passed and the agreements come into force, sector becomes irrelevant – The project agreements were valid when the applications were made – Applications dismissed

COPE CONSTRUCTION AND CONTRACTING INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE IBEW, LOCAL 530, ET AL 537

Public Sector Labour Relations Transition Act – Judicial Review – ONA brought an application for a declaration that a "health services integration" under the PSLRTA had occurred – A fertility treatment clinic (OFC) operated pursuant to a contractual arrangement with the Ottawa Hospital whereby the hospital provided support staff, equipment, laboratory space and facilities – When OFC was moved to new premises, the employees who followed were only offered employment on the basis that they were new employees; OFC did not recognize the bargaining rights that existed in the Hospital setting – The Board held that a health services integration had occurred and exercised its discretion to declare that the PSLRTA applied to the integration – On Judicial Review the court found that the Board properly determined that the OFC was an "employer" who met the definition of "health services integration" under s. 2 of the PSLRTA – The court found OFC's argument that s. 2(b) only applies to employers who provide non health care services to the health services sector to be contrary to the plain reading of the section which states that it applies to an employer whose primary function is the provision of services within the health services sector – Additionally, there was ample evidence to suggest that there had been a health services integration (dissolution, transfer, continuance and discontinuance of services provided by the OFC as a result of its move from the hospital) – Finally, the court found the Board's decision to exercise its discretion by applying the *Act* to the integration consistent with the purposes of the *Act* – Accordingly, the Board's decision was within a range of acceptable and rational outcomes – Application dismissed

THE OTTAWA FERTILITY CENTRE INC.; RE ONTARIO NURSES' ASSOCIATION; ONTARIO PUBLIC SERVICE EMPLOYEES UNION; CANADIAN UNION OF PUBLIC EMPLOYEES; LOCAL 4000; THE OTTAWA HOSPITAL; AND OLRB 624

Status – Bargaining Unit – Certification – Construction Industry – The Carpenters sought to certify employees of Struct-Con - The issue before the Board was whether certain persons should be considered employees for the purposes of determining the number of employees in the bargaining unit - The persons in question were employed by the union to assist in organizing and sought employment with Struct-Con for this purpose – Struct-Con argued that while these persons may be employees for all other purposes, they should not be considered employees for the purpose of the bargaining unit count because their overriding duty to the union (as their employer) precludes them from making a free designation of a representative – Struct-Con also argued that the individuals' employment by the Carpenters constituted undue influence on the part of the union - The Board rejected the employer's argument, holding that it was not the Board's role to assess the motives of anyone in the bargaining unit: under s.128.1(4) the Board is limited in its inquiry to whether the union represents a majority of persons in the bargaining unit on the date of application, regardless of how they got there or how they formed their opinion about being represented by the union – Accordingly, the persons in question were found to be part of the bargaining unit on the date of application – Matter continues

STRUCT-CON CONSTRUCTION LTD.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, CJA 607

Trade Union – Certification – Construction Industry – The Board was asked to determine whether the Canadian Construction Workers' Union was a construction trade union within the definition set out in s. 126 of the Act - The Board identified the criteria for the determination as (a) the trade union's constitution; (b) the trade union's history, antecedents and associations; (c) the union's organizational base and collective bargaining practices, including the kinds of employees and bargaining units the union represents; (d) the union's relationship with its parent and other unions; (e) the presence of a hiring hall and/or out-of-work list; (f) whether the union represents one or more trades; (g) whether the union operates welfare, pension or training funds; and (h) whether the union aspires to bargaining rights with more than one employer – The Board held that the key criterion was the union's organizational base and collective agreement practices – The CCWU was able to demonstrate that it has two valid collective agreements and one voluntary recognition agreement – The Board found that CCWU satisfied a clear majority of the criteria – Matter continues

STARLAND CONTRACTING INC.; RE CANADIAN CONSTRUCTION WORKERS' UNION; UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183 600

Trade Union – Trusteeship – CUPE applied to continue its trusteeship over its locals for a further twelve months, beyond the twelve month extension it had already received from the Board – The Board found that s. 89(2) only allows one extension for up to an additional 12 months – Accordingly there was no authority to permit a further extension – Application dismissed

CANADIAN UNION OF PUBLIC EMPLOYEES; RE CUPE Local 4276 and 4276-01 ... 534

Trusteeship – Trade Union – CUPE applied to continue its trusteeship over its locals for a further twelve months, beyond the twelve month extension it had already received from the Board – The Board found that s. 89(2) only allows one extension for up to an additional 12 months – Accordingly there was no authority to permit a further extension – Application dismissed

CANADIAN UNION OF PUBLIC EMPLOYEES; RE CUPE Local 4276 and 4276-01 ... 534

Unfair Labour Practice – Discharge for Union Activity – Interim Order – The union sought interim reinstatement of a part-time grocery clerk, pending an unfair labour practice complaint which alleged that he was discharged for union activity – The employer claimed that the individual was legitimately terminated for misconduct and that it had no knowledge of an organizing campaign or of the employee's involvement in such a campaign – The Board found and the employer conceded that the discharge occurred during an organizing campaign and that there was a serious issue to be tried – Concerning irreparable harm, however, the Board found that the discharged employee was not instrumental to the success of the campaign and that his absence from the workplace did not effect the momentum of the organizing drive – Accordingly, the Board denied interim relief – Application dismissed

1319557 ONTARIO LIMITED C.O.B. UPPER GAGE PRICE CHOPPER; UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA) 513

Unfair Labour Practice – Interim Relief – The Labourers argued that four employees were not recalled following a seasonal lay-off, and sought reinstatement for each – One employee was unavailable to return to work for health reasons; two were reinstated in accordance with the employer's recall policy – The Board found that the employer failed to provide direct evidence in its declaration and at the consultation to substantiate its conduct with respect to the remaining employee – After the application for certification was filed, and when the union sought to have the employee's name added to the employee list, it would have been clear to the employer that the individual was a union supporter – Failure to recall is not as dramatic as discharge, but it is unusual and leads to a logical inference that there would have been a connection between union support and the failure to recall – Irreparable harm established – Interim relief granted

ALMON EQUIPMENT LTD.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 526

1018-09-M United Food and Commercial Workers International Union (UFCW Canada), Applicant v. **1319557 Ontario Limited c.o.b. Upper Gage Price Chopper**, Responding Party

Discharge for Union Activity – Interim Order – Unfair Labour Practice – The union sought interim reinstatement of a part-time grocery clerk, pending an unfair labour practice complaint which alleged that he was discharged for union activity – The employer claimed that the individual was legitimately terminated for misconduct and that it had no knowledge of an organizing campaign or of the employee's involvement in such a campaign – The Board found and the employer conceded that the discharge occurred during an organizing campaign and that there was a serious issue to be tried – Concerning irreparable harm, however, the Board found that the discharged employee was not instrumental to the success of the campaign and that his absence from the workplace did not effect the momentum of the organizing drive – Accordingly, the Board denied interim relief – Application dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *John R. Evans, K.C. Wysynski, Kyle Young, Kyle McGreal* and *Kevin Shimmin* for the applicant; *John Mastoras, Dave Jenkins, Sam Ciardullo* and *Chris Cummins* for the responding party.

DECISION OF THE BOARD: July 23, 2009

1. The style of cause is hereby amended to reflect the correct name of the responding party: "1319557 Ontario Limited c.o.b. Upper Gage Price Chopper".

2. This is an application for an interim order under section 98 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). There is a pending unfair labour practice complaint (Board File No. 1017-09-U) which will be dealt with by the Board at a later date.

3. The responding party ("the company" or "the store") operates a grocery store employing approximately fifty individuals in Hamilton. Mr. Kyle Young, a part-time grocery clerk employed by the store since July 14, 2008, was terminated on June 22, 2009. In the pending unfair labour practice complaint ("the complaint"), the applicant (or "the union") contends Mr. Young's termination was unlawfully motivated, as a result of his involvement in an organizing drive, and seeks in this application his interim reinstatement pending the outcome in the complaint. The company takes the position that Mr. Young was legitimately terminated for misconduct, and in any event, that it had no knowledge of an organizing campaign or of Mr. Young's involvement in such a campaign.

4. A number of declarations have been filed in this matter. Mr. Young and Kevin Shimmin, the applicant's National Representative, made declarations on behalf of the applicant. Declarations on behalf of the employer were made by David Jenkins and Sandy Jenkins, the store's co-owners; Kevin Savelli, a grocery clerk; Anna DaSilva and Edith Smith, part-time cashiers; and Sam Ciardullo, a grocery department manager.

5. The matter proceeded by way of consultation on July 17, 2009. At the outset I indicated to the parties that the purpose of the consultation was to elicit further information to enable the Board

to answer the questions posed by the provisions of section 98. I also indicated that the inquiry was not for the purpose of making findings of fact whether or not an unfair labour practice had been committed. That function is left to the panel assigned to the pending complaint.

6. There were factual disputes between the parties, but in my view, they are not material to the disposition of this matter. They may very well be material in the pending complaint.

7. In January 2009, well before the formal commencement of the union's organizing drive and Mr. Young's involvement in it, Mr. Young was involved in an incident with the store's co-owner, David Jenkins. Mr. Young became argumentative when Mr. Jenkins expressed disapproval that Mr. Young was wearing a toque in the store during working hours while stocking frozen products. Mr. Young grew visibly angry and flung his toque to or across the floor, an act that he himself acknowledges was inappropriate. Mr. Jenkins responded with a written warning which characterized Mr. Young's actions as unwarranted and the blind flinging of the toque as potentially injurious to staff and/or customers. Mr. Jenkins concluded the letter as follows:

> ... I also want to ensure that you understand that if there is any insubordinate conduct or violent behaviour directed towards myself, fellow staff and customers, your employment with Upper Gage Price Chopper will be terminated immediately.

8. Throughout the consultation in this matter, counsel for the union strongly derided the notion that the thrown toque constituted a potentially dangerous projectile, and called into question the company's reliance on this incident to justify the eventual termination of Mr. Young about six months later. In my view, whatever one might think about the health and safety risks a flying hat might pose, the relevance of the incident for the purposes of this proceeding is that it demonstrated that Mr. Young had on that occasion been inappropriately argumentative and short-tempered in response to a reasonable request by Mr. Jenkins. That is a relevant consideration in assessing the circumstances of his termination in June 2009.

9. In March 2009, a UFCW organizer, Penny Paulley, attended the store on two occasions. Mr. Jenkins knew who she was because he had been provided a surveillance camera image of her by another Price Chopper store operator and told that she was a union organizer. On the first occasion, Mr. Jenkins saw Ms. Paulley speaking to the Deli Manager. He did nothing about it. When he saw her in the store again a couple of weeks later, he and his wife waited at the front of the store until Ms. Paulley was preparing to leave. Mr. Jenkins introduced himself and his wife to Ms. Paulley, and advised her that the store's policy prohibited solicitation. Ms. Paulley then left the store.[1] Mr. Jenkins candidly admitted to me that he had formed the impression that Ms. Paulley had been attempting to solicit union membership from the store's employees.

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[1] The declaration of Kevin Shimmin, the applicant's National Representative who had charge of the organizing campaign that commenced at the store on May 1, 2009, gives a somewhat different version of the events involving Ms. Paulley's visit to the store in March, but clearly Mr. Shimmin did not personally observe any aspect of that visit, and his account is based entirely on hearsay comments by Ms. Paulley, who did not file a declaration in this matter. I therefore accept Mr. Jenkins' version for the purposes of this proceeding.

10. The campaign to organize the store began on May 1, 2009[2] when Mr. Young signed a membership card in the union, and volunteered to be an inside organizer. In fact, he was the sole inside organizer.

11. Mr. Young immediately spoke to the store's employees about the benefits of unionization and solicited their support. He distributed membership cards and information packages to any employee who indicated any interest. In the second week of the campaign he obtained two signed membership cards. Over the next two weeks, he obtained two more signed cards. After the first week in June 2009 and up to the date of his termination, he received no further signed cards.

12. According to Mr. Young's declaration, at around the beginning of June 2009 he openly declared his support for the union to Sam Ciardullo, Mr. Young's day-to-day supervisor.[3] Mr. Ciardullo's declaration indicates that he reviewed Mr. Young's declaration, but it does not address the allegation that Mr. Young declared his union support. At the consultation, I asked Mr. Young to explain how his disclosure to Mr. Ciardullo came about. Mr. Young stated that he overheard Mr. Ciardullo and Gary Munt complaining about their hours of work and their lack of money. Mr. Young mentioned to Mr. Ciardullo that he had been speaking to people about those kinds of issues, and that perhaps Mr. Ciardullo would like to learn more about that over a beer after work. Mr. Ciardullo indicated that he did not want to wait to discuss the matter later. Mr. Young told the Board that the two of them then had a very brief conversation in which Mr. Young attempted to generate Mr. Ciardullo's interest in a union. Mr. Ciardullo indicated that he did not think a union would be particularly helpful to him. Some time after the discussion, Mr. Young says that Mr. Ciardullo came up to him and told him, "You do whatever you need to do."

13. I asked Mr. Ciardullo for his response to Mr. Young's elaboration. He said he recalled a conversation with Mr. Young, but that it did not involve the subject of a union. He characterized the discussion as "just blowing off steam". He then stated that he recalled no details of the content of his conversation with Mr. Young, but he denied that Mr. Young revealed himself as a union supporter.

14. Within days prior to the June 22, 2009 termination, Mr. Young was given an annual performance evaluation by Mr. Ciardullo. In his declaration, Mr. Young claimed that Mr. Ciardullo was highly impressed and that he deemed Mr. Young's performance to have been exceptionally good. The evaluation involved the completion of a standard form, rating the employee under the categories of customer relations, appearance/grooming, attendance, safety, job knowledge, work quality/accuracy, cooperation/dependability, and initiative, with a range of numerical outcomes in each category. A numerical outcome of 1 is the lowest score achievable, and it indicates that the employee is still in the developmental stage. A 2 indicates that performance within the category requires improvement; a 3 signifies that performance meets job requirements; a 4 means that performance exceeds job requirements, and a score of 5 indicates exceptional performance.

15. Mr. Ciardullo's ratings, which were shared with Mr. Young during their meeting, gave Mr. Young a rating of 4 in customer relations and work quality. He was given a 3.5 both in the

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[2] Mr. Shimmin stated at the consultation that Ms. Paulley's visits to the store in March did not mark the commencement of the organizing drive. There was no information in any of the pleadings or the declarations filed in this matter as to the purpose of Ms. Paulley's presence in the store.

[3] Mr. Young considered Gary Munt and Kevin Savelli, both grocery clerks, also to have supervisory responsibilities with respect to his work. However, the only person he felt had any authority to make decisions that might affect his employment, such as his hours of work, was David Jenkins.

category of appearance/grooming and in job knowledge. He rated a 3 in safety, a 2.5 in attendance/punctuality, and a 2 in both cooperation/dependability and initiative. Mr. Ciardullo gave Mr. Young an overall rating of 3 (performance meets requirements). Mr. Young did not take issue with the accuracy of these ratings when I questioned him during the consultation.

16. On June 17, 2009, Mr. Young was involved in a number of what I shall term conflicts with co-workers and a store customer. These conflicts were precipitated by a conversation Mr. Young had with Sandy Jenkins, the store's other co-owner and spouse of David Jenkins. The subject of their conversation was not work-related. It concerned a documentary Ms. Jenkins had viewed about either post-war Germany or the Holocaust. Ms. Jenkins stated in her declaration that she found Mr. Young's comments disturbing, and that she ended the discussion. Mr. Young claims that Ms. Jenkins accused him of being a Holocaust denier, which he found a bizarre accusation and which he denied. He stated in his declaration that he removed himself from the conversation.

17. Soon thereafter Mr. Young began stocking shelves after receiving instructions from Mr. Savelli, a full-time grocery clerk. It would appear that there was a misunderstanding between them as to the stocking procedure, with the result that the items were incorrectly placed, and there was some ensuing tension between Mr. Savelli and Mr. Young.[4]

18. Mr. Young's troubles continued after he responded to an aisle clean-up. While in the course of the clean-up, a co-worker, Edith Smith, approached him about signing a greeting card for another employee. Mr. Young declined her request, and according to him, Ms. Smith became upset, returned to her work area, and said loudly, "If he doesn't want to be here then he should go home."[5]

19. The final incident occurred in front of Anna Da Silva, a cashier. Ms. Da Silva was attempting to assist a customer to locate a product. She made a phone inquiry, and shortly after Mr. Young arrived at her work station. Mr. Young had apparently already informed the customer earlier that the store did not have the product. He said to the customer, "I told you that we don't have the item, why are you asking the same question again", or words to that effect. Ms. Da Silva states in her declaration that Mr. Young's comment was rude and unprofessional.

20. Apparently by this point, two hours into his shift, Mr. Young realized that he was not having a good day at work, and that the situation was not likely to improve. He asked Ms. Jenkins to be excused for the rest of the day, and his request was granted. He returned two days later on June 19, 2009 and worked his shift without incident.

21. Mr. Jenkins was not present in the workplace on June 17, 18 or 19. He learned of the events of June 17 from employees when he arrived at the store on Saturday, June 20. He interviewed several key witnesses, and asked that they provide written statements. He reviewed the written statements, and concluded that he should terminate Mr. Young. He drafted a brief letter, as follows:

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[4] Mr. Savelli completed a report on the incident at Mr. Jenkins' request on June 21, 2009, a day before Mr. Young's termination. The report describes Mr. Young ranting and raving and carrying on angrily after being admonished by Mr. Savelli.

[5] Ms. Smith also prepared a report of the incident in which she observed that Mr. Young was upset during their encounter, and that he was quite dismissive of her request to sign the greeting card. Ms. Smith admits she called him an "ass" and told Mr. Young that if he did not want to be at work, as appeared to her to be the case, he ought to go home.

> Kyle, as a result of your actions on Wednesday June 17th your employment at Upper Gage Price Chopper has been terminated. Your conduct in front of customers and staff was unacceptable in the workplace. Kyle, as stated in a previous written warning to you dated January 16th this type of behavior would result in your dismissal.
>
> All pay owing to you will be deposited into your bank account on Thursday July 2nd including accumulated vacation pay.

22. On Monday, June 22, 2009, Mr. Young arrived to begin his shift. He was asked to meet with Mr. and Ms. Jenkins. Mr. Jenkins asked for Mr. Young's version of the events of June 17, 2009. Mr. Young provided the details. In Mr. Jenkins' opinion, Mr. Young corroborated the versions of the witnesses. He gave Mr. Young the termination letter. Mr. Young read it and said he knew that this day had been coming. He did not say anything about his role as a key inside organizer, or anything about the organizing campaign.

23. Despite the loss of the only inside organizer, the union continued with the campaign. Over the course of approximately three weeks following Mr. Young's termination on June 22, 2009, a team of external union "activists", in consultation with Mr. Young, were able to obtain three additional memberships from store employees. (In his declaration dated July 2, 2009, Mr. Shimmin said that the organizing drive came to an end following Mr. Young's termination, and that employees were fearful as a result and not willing to sign membership cards. However, since that declaration, the Board learned during the course of the consultation of the three additional cards.)

24. Approximately two weeks after Mr. Young's dismissal, the union filed this application for interim relief. Mr. Jenkins contends that until then, he did not know of any organizing campaign or of Mr. Young's role in it.

25. Before turning to the analysis of the applicable provisions of the Act and the information that is before the Board, I should briefly refer to a document that was submitted by counsel for the company during the course of the consultation. It was a somewhat cryptic note authored by Mr. Young to Mr. Jenkins in which Mr. Young detailed an odd Facebook exchange between himself and a person he did not know concerning working conditions in the grocery industry. Apparently Mr. Jenkins became worried about the exchange with this individual, and decided to let Mr. Jenkins know about it, and to offer his assistance to Mr. Jenkins in the event of any future related developments arising from the Facebook exchange. There was a significant discrepancy between Mr. Young and Mr. Jenkins concerning when the note was given to Mr. Jenkins. In any event, I am not prepared to give this information any weight in this proceeding because it is the kind of document that should have been, but was not, alluded to in Mr. Jenkins' declaration, and ought to have been disclosed to the union before the consultation.

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26. The provisions of section 98 of the Act directly relevant to this matter are as follows:

> **98.** (1) On application in a pending proceeding, the Board may,
>
> (a) make interim orders concerning procedural matters on such terms as it considers appropriate;

(b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and

(c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer.

(2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:

1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.

2. There is a serious issue to be decided in the pending proceeding.

3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.

4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.

(3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.

(4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant.

27. The union submits that all of the elements of subsections 98(2) and (3) of the Act are satisfied. While the company concedes that the application satisfies the criteria under paragraphs 1 and 2 of subsection 98(2) of the Act, it asserts that the union has not established that the interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives (paragraph 3 of subsection 98(2)); or that the balance of harm favours the granting of the interim relief (paragraph 4 of subsection 98(2)). Furthermore, the company submits that there is an appearance that Mr. Young's dismissal was unrelated to the exercise of rights under the Act by an employee (subsection 98(3)), and that therefore the Board is prohibited from exercising its powers under subsection 98(1)(b).

28. Given the agreement of the company, I find that the circumstances giving rise to the pending proceeding – the unfair labour practice complaint in Board File No. 1017-09-U – occurred at a time when a campaign to establish bargaining rights was underway. Moreover, I find that there is a serious issue to be decided in the pending proceeding.

29. This brings me to paragraph 3 of subsection 98(2). In order to avoid failure in this proceeding, the union bears the onus of establishing on a balance of probabilities all the criteria in subsection 98(2), including that the interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives. Counsel for the union made brief submissions concerning irreparable harm. He did not refer to any other significant labour relations objective that might be achieved through the interim remedies sought by the union. With respect to irreparable harm, counsel for the union pointed out that the organizing campaign resulted in the signing of cards, and that it remains a going concern. The loss of Mr. Young is an insurmountable obstacle to the union's organizing drive, according to counsel.

30. I am not persuaded, based on the undisputed facts concerning the gathering of union membership cards, that the interim remedies the union seeks - most significantly, Mr. Young's reinstatement - are necessary to prevent irreparable harm to the union. In the more than seven-week period in which Mr. Young was the sole inside organizer, he collected four signed membership cards. In the approximately three-week period following his termination, the union, with Mr. Young's assistance, obtained three additional cards. In other words, Mr. Young's presence in the workplace does not appear to be absolutely essential to the continuation or momentum of the organizing campaign.

31. The situation may be compared to that which existed in *Five Brothers Hospitality Partnership Limited c.o.b. Holiday Inn St. Catharines*, [2008] OLRB Rep. Sept./Oct. 633 (October 15, 2008). In that case, there were two inside organizers. The terminated organizer whose interim reinstatement the trade union sought had been able to obtain twenty cards in the first thirteen days of the organizing drive. She was laid off from employment on the fourteenth day of the drive. Her counterpart had obtained five cards in the same period. After the termination of the more prolific organizer, the union could only manage to obtain another three signed cards, without the direct assistance of the second organizer. The Board concluded that the laid off organizer had been instrumental to the success of the campaign, and that her absence from the workplace brought what had been a swiftly moving campaign to all but a standstill.

32. The case before me is in sharp contrast. With Mr. Young as the only inside organizer, the campaign appears to have advanced modestly over the seven weeks he was in the workplace. However, there has been no dramatic stall in the organizing drive as a result of his departure. The union, through the efforts of its own human resources, and with Mr. Young acting in a consulting role, has been able to maintain the pace of the campaign. I cannot conclude that the union will suffer irreparable harm if Mr. Young is not reinstated.

33. Because the union has not satisfied the Board with respect to paragraph 3 of subsection 98(2), it follows that, even if the applicant had established the condition outlined in paragraph 4 of subsection 98(2) and satisfied the test set out in subsection 98(3), the application must still fail. It is clear from a reading of subsection 98(2) that all the conditions contained in the provision must be met in order for the Board to be in a position to grant substantive interim relief. It is therefore unnecessary to make any determination about paragraph 4 of subsection 98(2) or about the application of subsection 98(3).

34. The application is dismissed.

35. The unfair labour practice complaint ought to be scheduled for hearing as soon as is reasonably possible.

2044-08-ES Rashpal Bining, Applicant v. **1391165 Ontario Inc. o/a Wallace Transport**, and Director of Employment Standards, Responding Parties

Employment Standards – The applicant applied for a review of an employment standards officer's refusal to issue an order to pay for unlawful deductions – The issue for the Board was whether there was an employment relationship between the applicant and the alleged employer – The Board found that while there were some characteristics of an employer-employee relationship (work assignment, benefits, a fair degree of economic dependence), the evidence pointed to a conclusion that the applicant was in business for himself: the applicant had earlier incorporated a company for carrying on business; he provided his own vehicle as owner/operator; he was required to provide a second vehicle if his truck happened to break down; he was not restricted to working for the alleged employer – Application dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Rashpal Bining* on his own behalf; no one appearing for the responding parties.

DECISION OF THE BOARD: July 2, 2009

1. This is an employee application under the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended ("the Act") for review of a refusal to issue an Order to Pay.

2. The style of cause is hereby amended to reflect the correct name of the applicant: "Rashpal Bining".

Background

3. The Employment Standards Officer found that there was no employment relationship between the applicant (or "Mr. Bining") and the responding party employer ("the company" or "Wallace Transport") that, in fact, Mr. Bining was an independent contractor. Accordingly, the Officer declined to issue an order to pay.

4. Mr. Bining disagrees with the Officer's findings. He contends that he was employed by the company, and he seeks the return of alleged unlawful deductions made by the company from his wages.

The evidence

5. Neither the company nor the Director of Employment Standards attended the hearing in this matter. Consequently, my findings of fact are based upon Mr. Bining's oral testimony, as well as some documents he identified in the course of giving his evidence.

6. Mr. Bining was engaged as a truck driver for another trucking business in around August 2007 when he was informed by the company's dispatcher, "Jim", of an opportunity to work for Wallace Transport. To the best of his knowledge, Mr. Bining began driving for Wallace Transport before the terms and conditions of his engagement with the company were reduced to writing. Later, he signed a number of documents proffered by Jim, outlining these terms and conditions, without reading them in detail or absorbing their contents.

7. One of the documents the applicant signed appears to be a kind of summary of the terms of his engagement. It sets out a number of options regarding compensation, including flat rates, mileage rates, hourly rates and fuel surcharges. (Mr. Bining testified that he was paid an hourly rate of $37.00, which falls within the range of hourly rates set out in the summary. There was no evidence, however, as to how his hourly rate was determined.) The summary highlights indicate that:

- pay is bi-weekly, and a two-week "holdback" is applicable;
- there is a group insurance package available to the drivers (referred to as "Owner/Operators";
- Owner/Operators are responsible for the initial purchase of licence plates, to be paid by payroll deduction, and the company is responsible for the cost of any licence renewals;
- Owner/Operators are responsible for the cost of any "tickets";
- Owner/Operators must contribute to fleet insurance, via payroll deduction, and are responsible for claim deductibles;
- Owner/Operators are subject to a bi-weekly $25.00 administrative fee via payroll deduction to cover the company's costs for the supply of driver's logs, road sheets, long distance phone calls and so forth;
- decals are provided by Wallace Transport at no cost to the drivers unless the driver quits or the contract is terminated by the company within six months, in which case, the driver is charged a $100.00 fee;
- there is no guarantee of income, but Wallace Transport seeks to keep all Owner/Operators working every day, and, to that end, drivers are encouraged to be available for work as much as possible.

8. A second document is entitled: AGREEMENT BETWEEN WALLACE TRANSPORT AND OWNER/OPERATOR REGARDING OWNER/OPERATOR SERVICES. It makes clear that Mr. Bining was responsible to provide a tractor, without specification as to make, model or colour, and to haul trailers specified by the company for clients of the company such as National Grocers. In the event of mechanical breakdown of his tractor, Mr. Bining bore the responsibility to rent a temporary replacement if he was required by the company to haul a load. The agreement contains a clause which entitles Mr. Bining to perform work for any other company, but prohibits him from disclosing any confidential information about Wallace Transport or soliciting its customers. Finally, there is a provision entitling either party to terminate the agreement at any time by providing written notice.

9. A third document signed by the applicant is under the letterhead of the Workplace Safety and Insurance Board ("WSIB"). It is an application by Mr. Bining for a WSIB identification number as an independent operator without insurance (i.e., ineligible to claim WSIB benefits). In it, Mr. Bining verified that he was engaged by the company as an independent contractor, and further, that his relationship with the company satisfied a number of indicia of independent operator status, including his "market mobility" and his "discretion to enter into contracts of any duration to transport good and maximize profits."

10. Finally, Mr. Bining signed an agreement on behalf of his corporation, Ropi Freightlines Inc. ("Ropi Inc."), with Wallace Transportation dealing with deposits and notice of termination of contract. This agreement requires Ropi Inc. to pay a deposit of $1,000 or to permit ten weekly deductions from earnings at $100.00 per deduction, which Wallace Transport is entitled to hold for three months after the termination of the contract to offset the costs of any accidents, freight damage claims, parking violations or property damage. The deposit may be forfeited as "damages" to the company in the event the driver fails to give 30 days written notice of his intention to cancel his services as an Owner/Operator.

11. Mr. Bining testified that he worked about 50 to 60 hours per week for Wallace Transport. He was required to track his start and end times for all load deliveries on company paperwork, and submit them to Wallace Transport as well as to the businesses (e.g. National Grocers, Wilson) for which the company engaged his services. Mr. Bining did not engage in any other business on his own behalf during the period of his association with Wallace Transport.

12. Mr. Bining paid the cost of fuel and tractor maintenance when hauling loads on behalf of the company. It appears from the pay stubs he provided at the hearing (covering about half of his total period of employment) that deductions were regularly made every two weeks from his earnings for insurance ($169.24) and an administrative fee ($25.00). Mr. Bining testified that the company held back between $500.00 and $600.00 of his earnings. The company made no statutory deductions in respect of income tax, Canada Pension Plan or Employment Insurance.

13. The company terminated Mr. Bining's contract following an accident in which he was involved while hauling a load in January 2008. According to Mr. Bining, the damage caused by the accident was insurable, and the cost of repair would have been covered by the company's insurance policy. However, Mr. Bining learned from a representative of the insurer that the company had instructed the insurer not to pay the claim. Instead, the company recovered the cost of the accident by deducting it from Mr. Bining's final pay.

Analysis

14. The threshold question to be determined is whether or not Mr. Bining was employed by Wallace Transport. If not, he has no entitlement under the Act, and the application must be dismissed. If I find he was employed by the company, the second issue is whether or not any of the deductions or withholdings made by the company in respect of his earnings were prohibited by section 13 of the Act.

15. Subsection 1(1) defines an employee and an employer as:

"employee" includes,

(a) a person, including an officer of a corporation, who performs work for an employer for wages,

(b) a person who supplies services to an employer for wages,

(c) a person who receives training from a person who is an employer, as set out in subsection (2), or

(d) a person who is a homeworker,

and includes a person who was an employee;

"employer" includes,

(a) an owner, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it, and

(b) any persons treated as one employer under section 4, and includes a person who was an employer;

16. In *2006515 Ontario Inc. (c.o.b. Greco Health Shack)*, [2005] O.E.S.A.D. No. 34 (January 12, 2005), the Board made the following observations concerning the question of employee status:

> 37. The test to be applied in determining whether an individual is an employee or an independent contractor at common law was recently reviewed by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* [2001] 2 S.C.R. 983. The Court reviewed the various tests which have been articulated at common law over time: the "control test"; the "fourfold test"; and the "organization test" or "integration test". The Court noted the difficulties which have emerged from the application of each of these tests. Of note, with respect to the "organization test", the Court referred favourably to the following statement by MacGuigan J.A. in *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553:
>
> > Of course, the organization test of Lord Denning and others produces entirely acceptable results when properly applied, that is, when the question of organization or integration is approached from the persona of the "employee" and not from that of the "employer," because it is always too easy from the superior perspective of the larger enterprise to assume that every contributing cause is so arranged purely for the convenience of the larger entity. We must keep in mind that it was with respect to the business of the employee that Lord Wright [in *Montreal v. Montreal Locomotive Works Ltd.* [1947] 1 D.L.R. 161] addressed the question "Whose business is it?" [Emphasis added [by the Supreme Court of Canada].]
>
> 38. The Court concluded (at paragraph 46) that: "there is no conclusive test which can be universally applied to determine whether a person is an

employee or an independent contractor". The Court continued, however, as follows:

> ¶ 47 Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in *Market Investigations*, *supra* [*Market Investigations Ltd. v. Minister of Social Security* [1968] 3 All E.R. 732]. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.
>
> ¶ 48 It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.
>
> 39. Finally, it is important to note that whether or not an individual is an employee or an independent contractor is a question of law to be determined after consideration of all of the relevant factors. The intention of the parties is relevant only to the extent that it is reflected in the actual arrangements they have made with each other in structuring their relationship. Put another way, the parties cannot by their "agreement" render the relationship of an employee an independent contractor or *vice versa*: see for example *Greypoint Properties Inc.* [2000] OLRB Rep. May/June 479 at paragraph 15.

17. I agree with and adopt the approach articulated in the *Greco Health Shack* decision. The first question to be answered in this matter is whether Mr. Bining was employed by the company or was performing work for Wallace Transport as a person in business on his own account.

18. There was some evidence to suggest that Mr. Bining was employed by Wallace Transport. The company exercised more than minimal control over the applicant. The company, not the applicant, arranged and dispatched the work assignments, and Mr. Bining was required to fill out the company's paperwork accounting for his driving time. The company, not Mr. Bining, had established the business contacts with National Grocers and Wilson, and thereby stood to profit by the dealings with those businesses. Moreover, the company offered group benefit coverage to the Owner/Operators, a common feature of employment. More significantly, Mr. Bining worked a substantial number of hours every week hauling for Wallace Transport. The company, in fact, encouraged its drivers to make themselves available daily, and though the applicant was theoretically free to offer driving services to other businesses, given the amount of driving he did on behalf of Wallace Transport, it is hardly surprising that he did not do so. (Having said that, there was no evidence to suggest that the applicant was required to accept any, or a certain number, of the company's driving assignments.) This signifies a fair degree of economic dependence by Mr. Bining upon the company.

19. On the other hand, there was also evidence pointing to a conclusion that the applicant was in business for himself. For one thing, he had incorporated Ropi Inc. as early as 1996, well before he had any association with Wallace Transport. Presumably he did this for the purpose of carrying on business as an Owner/Operator in the transportation industry generally. More importantly, before he commenced his relationship with Wallace Transport, Mr. Bining acquired his own tractor. It was a term and condition of his engagement by the company that he provide his own vehicle and accept responsibility for the associated fuel, maintenance, insurance and licencing costs. Also, under the terms of his engagement, he would have had to incur the financial risk of renting another vehicle in the event his broke down in the midst of a hauling assignment. Moreover, the documents signed by the applicant suggest strongly that he and Wallace Transport viewed the applicant as an independent contractor. And finally, the company made none of the usual employment-related statutory source deductions from Mr. Bining's earnings. These final two factors carry less weight than the others. Notwithstanding the language of the contractual instruments and the absence of statutory source deductions, the true intentions of the parties concerning the status of their relationship ought to be gauged from the manner and means by which, and the terms and conditions under which, the work was performed. What matters is the substance of the relationship.

20. I conclude, on balance, that Mr. Bining's association with Wallace Transport more closely resembles an arm's length relationship between two businesses than employment. The chief reason is that Mr. Bining made a personal, substantial capital investment in the acquisition of a key piece of equipment that enabled him to earn a living in the transportation industry as an Owner/Operator. That factor, in my view, is highly significant. Mr. Bining's acquisition of the vehicle gave him market mobility within the trucking industry. Indeed, one of the contractual terms of his engagement with Wallace Transport was his right to contract with the company's competitors. Furthermore, in his association with Wallace Transport, Mr. Bining bore nearly the entire burden of all the costs associated with the operation of his tractor, including fuel, maintenance, insurance and licencing. He also shouldered the financial risk to replace his tractor in the event of a mechanical breakdown, and of any parking or moving violations. These factors are suggestive of entrepreneurship. On the whole, even though there were elements that suggest an employment relationship, Mr. Bining was a person in business on his own account. He was providing a service and being paid for the service he provided, not for his labour as an employee.

21. For these reasons, I find that the applicant was not employed by Wallace Transport. He therefore did not enjoy the protections and minimum standards of the Act.

22. Given my finding that Mr. Bining was not an employee, and is not covered by the Act, it is unnecessary to consider the issue of deductions and withholdings.

Disposition

23. The determination by the Employment Standards Officer to refuse to make an order to pay is hereby affirmed, and the application is dismissed.

0775-09-M Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Almon Equipment Ltd.**, Responding Party

Interim Relief – Unfair Labour Practice – The Labourers argued that four employees were not recalled following a seasonal lay-off, and sought reinstatement for each – One employee was unavailable to return to work for health reasons; two were reinstated in accordance with the employer's recall policy – The Board found that the employer failed to provide direct evidence in its declaration and at the consultation to substantiate its conduct with respect to the remaining employee – After the application for certification was filed, and when the union sought to have the employee's name added to the employee list, it would have been clear to the employer that the individual was a union supporter – Failure to recall is not as dramatic as discharge, but it is unusual and leads to a logical inference that there would have been a connection between union support and the failure to recall – Irreparable harm established – Interim relief granted

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Sean McFarling, Fabrizzio Massari, Carlo Ricci, Aziz Abdul* and *Rawle Beckles* for the applicant; *Katherine Pollock, Sara Parchello, Jake Ally* and *Marc Ally* for the responding party.

DECISION OF THE BOARD: July 9, 2009

1. This is an application brought pursuant to section 98(1)(b) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") seeking reinstatement of four employees to employment with the responding party ("Almon" or "the Employer"). The applicant, Labourers' International Union of North America, Ontario Provincial District Council ("the Union") asserts that they were not recalled to employment in or about March of 2009, essentially because they were identified by Almon as supporters of the Union. There are two outstanding applications for certification and an unfair labour practice application related to events occurring in 2008. This application was filed on June 10, 2009 in a manner set out below.

2. A consultation was held in this matter on July 2, 2009. By decision dated July 3, 2009 I directed Almon to reinstate to employment Mr. Abdul Aziz, one of the four employees, with reasons to follow. This decision contains those reasons.

3. At the commencement of the consultation into this matter, three of the employees were removed from consideration. One was unable to return to work for health reasons and the Employer indicated that it was prepared to recall two of them to employment in accordance with what it stated was its recall policy. Essentially, the Employer asserts it recalls by seniority and that it had reached the point on the list where it was prepared to recall those two employees. That leaves for consideration only the application in respect of Mr. Abdul Aziz. The facts are set out in the declarations by Fabrizzio Massari, an organizer for the Union, and Mr. Abdul Aziz. For the Employer, the only declaration filed was that of Mr. Marc Ally. Rule 19 deals with the form and content of declarations. Specifically, Rule 19.2(a) requires:

> **19.2** A responding party must file a response to the application not later than two (2) days after the application was delivered. A completed response must also include:
>
> (a) one or more declarations signed by persons with first hand knowledge, detailing all of the facts upon which the responding party relies. Each signed declaration must include the following statement: "This declaration has been prepared by me or under my instruction and I hereby confirm its accuracy".

4. Pursuant to Rule 41.1, the Board invariably holds consultations in such applications. Given the nature of the legal issues at stake, the types of declarations made, and the fact that the relief sought is only interim relief, the Board relies heavily, if not exclusively, on the declarations for all factual determinations. Only if there is an irreconcilable conflict of fact on a matter central to the Board's ultimate disposition of the case will the Board hear oral evidence. Absent such a conflict, the Board will not hear oral evidence from any party to clarify or supplement the declarations.

5. In this case, there are conflicting assertions in the pleadings of the Union and Almon, but many of them are not supported any statement in a declaration or are supported by a declaration in which the assertion in the declaration does not meet the requirements of Rule 19.2(a). That Rule requires that information be based on first-hand knowledge and that all of the facts be set out. In my view, the term "all the facts" must mean all the necessary facts and the proper particulars of those facts, including the dates of occurrence and the names of the individuals involved. Declarations that contain hearsay evidence or lack particulars in terms of time, date and names of individuals involved do not conform to the requirements of Rule 19.2(a).

6. The facts as I find them on the basis of the declarations and as noted above are as follows.

7. The Union's organizing campaign took place in October of 2008. Mr. Aziz declares that he was openly supporting the Union's organizing campaign. I infer that this means that other employees would understand he was a Union supporter, but in the absence of any particulars suggesting that he made any sort of statement in the hearing of a managerial person, I cannot conclude that that public support became known to the Employer. Mr. Ally denies that anyone in the company knew that fact and there is nothing to contradict that assertion.

8. Applications for certification were filed on October 30 and 31. One application is in the construction industry and the other is under the general provisions of the Act. Counsel advised that due to the status disputes and other issues arising in the case, it will take approximately 1-1½ years before this case is completed.

9. In December 2008, Mr. Aziz declares that he was approached by Bernie Kreuzer on behalf of the company to sign a document stating that he had been pressured into signing a Union card. He states that he refused. The Employer does not respond to this in its declaration, and accordingly, I find it likely occurred. Thus, in December 2008, the Employer would have known that Mr. Aziz was a Union supporter. In addition, the Board held a regional certification meeting in December of 2008 with respect to the construction industry application, at which time the Union sought to add Mr. Aziz to the list of employees. Given that the application was brought pursuant to section 128.1 of the Act, such an act clearly identified Mr. Aziz as a Union supporter.

10. The Employer's business is such that there are seasonal lay-offs at the end of each year, which last until early spring of the following year. The first of the employees named in the application was laid off on November 27. Mr. Aziz was laid off on December 12, 2008.

11. Although it was not known to the Union or the four employees at the time, on November 14, 2008, Almon posted a notice at Service Canada in Scarborough Town Centre which indicated that it was advertising for 4 labourers, 3 line painters, 10 truck drivers (power sweeper operator) and 10 truck drivers with a DZ and GZ endorsement on their licence. Almon's explanation that it still needed more employees is very difficult to reconcile with the fact that its business was slowing down at the end of the year. There seems to be no reason why it would advertise for advertisement for 27 employees on November 14, 2008 and then commence a seasonal lay off of employees after November 18, 2009. However, whatever plans Almon might have been making about its employee complement for the start of business in 2009, these advertisements appear to have had little effect.

12. In at least March of 2009, Almon began work again. It claims that it simply recalled employees to work in order of seniority because it regarded the principle of length of service as important. More practically, longer service meant greater experience and skill on the part of employees and it wished to retain those employees' skill and experience. The evidence in this respect is unsatisfactory from both parties. If an employer's defence is that it was recalling employees in accordance with seniority or length of service, it is not a difficult task to put together a list of (as counsel advised in this case) 35 employees, with their date of hire and their date of return. Almon did not do so. The Union, on the other hand, alleges that there were newly-hired employees sometime in the spring of 2009. While the names would not likely be known (although a first name might be), surely the Union would be able to identify the sites on which the employee worked and the type of equipment or work on which the employee was working. However, the case can be decided on the basis of an assumption that Almon was recalling employees, as it asserts, in accordance with their length of service.

13. Almon states that it called Mr. Aziz when it reached his name on the seniority list. It says he did not return the calls and hence, they moved on down the list. Although it is not set out in his declaration, counsel for the Union at the consultation acknowledged that there had been two telephone calls to Mr. Aziz's telephone. Counsel advised that they came while he was out, but he recognized Almon's phone number. In his declaration, Mr. Aziz states that he began to telephone Almon's dispatcher, Mr. Yusef Ally, in March of 2009 to inquire about a recall date. At the consultation, counsel asserted that this was in response to the two calls he received from Almon. In any event, Mr. Aziz further declares that Mr. Yusef Ally told him there was no work, and then on a date in May of 2009, Yusuf Ally stated that Mr. Jake Ally, President of Almon, did not want Mr. Aziz back.

14. Almon denies this, but has not provided any declaration on which the Board can rely. Mr. Marc Ally's declaration is simply hearsay. He says he instructed others to recall Mr. Aziz, and then was told something by those persons. That does not meet the requirements of Rule 19.2(a). In addition, there is no statement by Mr. Yusef Ally contradicting or in any way questioning the assertions made by Mr. Aziz. Almon addresses this only through the declaration of Mr. Marc Ally that "any discussions or incidents between the employees named in this application and Yusef Ally can only be properly known as between those parties". If, as counsel asserted at the consultation, Mr. Yusef Ally is a bargaining unit employee, it would have been easy for Mr. Marc Ally to say that. He did not. Even if he were a member of the bargaining unit there is no reason why the employer

cannot at least ask him what happened or seek to obtain a statement from him. No explanation of any sort is provided for the absence of a declaration by Mr. Ally or Mr. Marc Ally's refusal to ask about the incidents.

15. Mr. Aziz also states that at a later time in May of 2009 he called Tim Stewart, the other dispatcher, to inquire about work, and that Mr. Stewart called him after promising to speak to Mr. Marc Ally. Mr. Stewart later informed him there was no work available. There was no response of any sort to that assertion in the declaration.

16. Mr. Aziz declares that he attended the Service Canada office in Scarborough Town Centre and saw the postings that had been placed much earlier by Almon for the 27 employees indicated above. His first step was to call Tim Stewart to see if work was available and ultimately was told there was not. The Union filed this complaint on June 10, 2009.

Legal Issues

17. The requirements of section 98 in respect of this application are as follows:

> **98.**(1) On application in a pending proceeding, the Board may,
>
> ...
>
> (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
>
> ...
>
> (2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:
>
> 1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.
>
> 2. There is a serious issue to be decided in the pending proceeding.
>
> 3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.
>
> 4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.
>
> (3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.
>
> (4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant.

18. There is no dispute that paragraphs 1 and 2 of section 98(2) apply to this application. The circumstances giving rise to this application occurred at a time when a campaign to establish bargaining rights was underway and there was a serious issue to be decided in the pending proceeding. The remaining three issues in paragraphs 3 and 4 of 98(2) and the application of subsection 98(3) are in dispute.

Irreparable Harm

19. The Employer asserts that there can be no irreparable harm to the Union. It argues that in many, if not most decisions, the Board has dealt with an employee who has been discharged who is found to be the key organizer on behalf of the union. In *Patrolman Security Services Inc.*, [2005] OLRB Rep. September/October 818 (October 5, 2005), the leading case on interim reinstatement, the employees were found to be key employees who had actively assisted in obtaining membership evidence for the Union. There was no dispute that they were key inside union organizers. In *Metrican Stamping Co. Inc.*, [2005] OLRB Rep. November/December 1013 (November 23, 2005), the employee had canvassed members of the bargaining unit on two occasions and had obtained the Union's membership evidence. Indeed, in that case, once the employee at issue was discharged, the Union lost all contact with the bargaining unit since it had all been channelled through him. Finally, in *Ontario Lottery and Gaming Corporation* [2006] Can LII 6044 (ONLRB), the employee was an exceedingly vociferous advocate of the union and it was, in fact, his vociferousness that created difficulties that led to his discharge. On the other hand, he was not a key employee in the Union's organizing campaign and that played a small factor in the Board's decision not to reinstate him on an interim basis.

20. It is Almon's view that Aziz was not a key organizer. The term is not a defined term and is used often quite loosely by parties who appear before the Board. In this case, the Union clearly has other contacts in the bargaining unit and has not been cut off from contact with employees.

21. The Union identified the irreparable harm as follows. It relies on the fact that Mr. Aziz was a vocal supporter of the Union. His declaration that he was openly supportive of the Union certainly indicates employees would be aware of his loyalties. His refusal to sign a declaration that he had been pressured into signing the Union card and the fact that the Union sought to add him to the list in the construction application made his loyalties clear to the Employer. Thus, both employees and Almon were aware of his support for the Union. Almon further asserts that it recalls employees by seniority each year. Thus, while the failure to recall an employee is not as dramatic a gesture as a discharge, the fact that Mr. Aziz was not recalled at a time when he would normally have been recalled would appear unusual. Since he was clearly a supporter of the Union, it would be a logical inference to draw that the two facts were connected.

22. The certification applications will take (according to counsel) over a year to deal with, including status disputes. During that time, the Union will need to maintain contact with employees in the bargaining unit, and aside from retaining support and loyalty of its current supporters, will need them to provide evidence and to be prepared to come forward as witnesses to testify. If employees perceive that publicly supporting the Union carries a risk of lay-off or discharge, it will be very difficult for the Union to conduct its case. The Board has recognized that kind of irreparable harm in cases such as *Tate Andale Canada Inc* [1993] OLRB Rep. Oct. 1019 at paragraphs 57 to 58, *Cooper Industries (Canada) Inc.*, [1994] OLRB Rep. March 225 at paragraph 13, and *Sarnia Paving Stone Ltd.* [2005] OLRB Rep. September/October 840 (October 3, 2005) at paragraph 38. Indeed, in such

cases such as *Cornerstone Structural Restoration Inc.*, [2008] OLRB Rep. November/December 760 (December 19, 2008), the Board relied at paragraphs 38 and 39 not only on certain declarations provided by the Union, but on the Board's own expertise in the area to conclude that it is a reasonable inference to conclude that employees will perceive the lack of employment opportunities or continued employment opportunities of a person such as Mr. Aziz as related to his support for the Union.

23. Almon argues that there is no evidence that the Union's organizing campaign is frozen or has come to a halt as a result of this discharge. As is often alleged in cases such as *Metrocan*, above, it is true that the Union's perception that it may suffer irreparable harm is not at this time demonstrable by that sort of evidence. However, paragraph 3 of subsection 98(2) asks the Board to determine whether the relief is necessary "to *prevent* irreparable harm". The paragraph inevitably asks the Board to make a judgement about what will happen in the future. A union is not required to actually suffer irreparable harm to demonstrate that the relief is necessary in order to prevent precisely that sort of harm.

24. In addition, paragraph 3 of subsection 98(2) requires a union to demonstrate that the interim relief is necessary to prevent irreparable harm or "is necessary to achieve other significant labour relations objectives". The correction of a reasonable conclusion that may be held by employees that support for the union will lead to a loss of employment is a significant labour relations objective. Any such loss of employment would be a violation of the *Labour Relations Act, 1995* and it is necessary to demonstrate that fact to employees who may have little or no experience with collective bargaining.

Balance of Harm

25. This factor is easily dealt with. Almon attempted to minimize the harm that the Union will suffer if relief is denied. As noted above, I do not accept the argument Almon made with respect to the potential irreparable harm that the Union might suffer. In any case, a "balance" of harm involves the weighing of two potential harmful outcomes. On Almon's side, there is potentially no harm. It says that Mr. Aziz was an employee with experience. It had no trouble with him as an employee and found him to be satisfactory. His three years of work means that he had a certain level of skill that Almon would wish to retain. Almon says it attempted to recall him to employment in March. The only possible harm here is whatever feelings of annoyance or offence Almon may feel as a result of being forced to reinstate an employee who it feels did not respond to calls to return to work. This level of harm hovers just above zero.

26. There may well be some harm to another employee, in the sense that recalling Mr. Aziz may lead to a lay-off of someone else. That, of course, is not an institutional harm to the Employer, and the person was either a new employee or someone with less service and less experience than Mr. Aziz. In any event, it is worth remembering what the Board said in *Clayson Steel (1988) Inc.* [2007] OLRB Rep. January/February 57 (January 19, 2007) at paragraph 41, namely, that it would be prudent for Almon to consult with the Union in making any such decision in order to lessen or eliminate the potential for other challenges.

27. By contrast, the Union has a quantifiable level of potential harm, as discussed above. Some harm outweighs no harm. Thus, the balance of harm in this case favours the granting of interim relief.

A connection to the exercise of rights under the Act

28. Finally, subsection 98(3) is an additional and overarching consideration in the granting of interim relief. The Board set out the proper analysis of subsection 98(3) in *Patrolman Security Services Inc.*, above, at paragraphs 52 to 60:

> 52. Fourthly, section 98(3), crafted with a double negative, requires the Board to determine whether it "appears" that the discipline or discharge was "unrelated" to the exercise of rights under the Act. In the context of an application for interim relief as here, where the main claim is that employees have been discharged ***because*** they were exercising rights under the Act, the term "unrelated" must mean "not causally related" as there could not be other possible degree of "relatedness" that would be relevant or probative.
>
> 53. In the Board's view, section 98(3) assumes that the Board will look beyond the pleadings and declarations filed to make an assessment of the quality of the evidence to be put forward in the main application. Where the pleadings and materials filed in the interim application reveal disputes of fact, section 98(3) contemplates that the Board will engage in some process of inquiry to determine whether there is an appearance of a relationship between the exercise of rights and the impugned discipline or discharge. The Board is required then to conduct some form of inquiry to determine whether there is an ***appearance*** of a ***causal relationship*** between the exercise of rights under the Act and the impugned employer conduct. In the circumstances of this case, the inquiry is directed to determine whether there is an appearance of a causal relationship between the union organizing by Messrs. Hayat and Shabbir, and their discharges.
>
> ...
>
> 59. From the perspective of making the provisions work in a practical labour relations sense, this notion of the term "appears" in section 98(3) has intuitive resonance. Clearly, the legislature would not intend the inquiry on an interim application to determine the same issues that must and will be determined when the main application is heard on the merits. At the same time, as in section 8(2), the ability to make decisions and to determine consequences on the more cursory standard of "appearance" – as opposed to actual findings of fact - lends itself to expedition. This type of surface investigation is in accordance and balance with the "interim" and temporary nature of the relief available under the section. The inquiry can be cursory and the tolerable margin of error greater, where a mistaken conclusion should it occur, can be cured in the more detailed and time consuming process of adjudication in the main application. From a labour relations adjudication perspective, the legislature's use of the term "appear" in section 98(3) is a classic example of the balancing of practical expedition as against adjudicative accuracy.
>
> 60. On this basis, the Board concludes that the legislature contemplated that in order to address section 98(3) the Board would conduct a summary process, designed in part to determine whether there is an appearance of a causal relationship between the exercise of rights and the employer's

> impugned conduct. The question then in the present case is whether there is on the information provided to the Board both in the material filed and what was garnered during the consultation process, a causal relationship between the union organizing efforts of Messrs. Hayat and Shabbir and their discharge.

That analysis has governed the Board's application of the interim relief sections ever since *Patrolman Security Services Inc.* was decided and it applies equally appropriately to this application.

29. For the reasons already given, I conclude that it appears that the action of Almon in not recalling Mr. Aziz was related to his exercise of rights under the Act. It is more likely than not that Mr. Aziz did speak to the two dispatchers about a return to employment, and that they were instructed that there was no work available for him. The employer's explanation of why it did not recall him when he did become available (even on the employer's theory) is inconsistent with what it says its recall policy is. Similarly whatever its motive in posting an opening for 27 jobs on November 14, 2009, it was not the explanation given. I conclude it appears that Almon did not recall Mr. Aziz because it identified him as a union supporter.

Conclusion

30. It is therefore appropriate that some of the relief sought by the Union be granted. Clearly, Mr. Aziz should be reinstated. The Union also sought an order that he not be laid off or terminated without the Union's consent or without the Board's consent. Such an order would not be justified on the material in this application. It is impossible to predict what level of business Almon will continue to enjoy or when the seasonal slowdown may occur in 2009. In any event, assuming Almon's practice is, as they say, to lay off and recall in order of length of service, it would not appear to be reasonable to interfere with that process. However, I do repeat my suggestion above, that any alteration to Mr. Aziz's employment relationship with Almon be taken only after consultation with the Union.

31. For the reasons given above, I therefore grant the following relief:

(a) Almon Equipment Ltd. is directed to recall to employment Mr. Abdul Aziz on the same terms and conditions of employment as would have been offered to him in March of 2009.

(b) Almon Equipment Ltd. is directed to post the Notice attached to this decision in such locations that it is likely to come to the attention of every employee of Almon Equipment Ltd., to keep them in such places and to add them to such additional places as may be necessary, that the Notice remains posted for a period of 60 days.

2208-07-T Canadian Union of Public Employees, Applicant v. Canadian Union of Public Employees, Local 4276 and 4276-01, Responding Party

Trade Union – Trusteeship – CUPE applied to continue its trusteeship over its locals for a further twelve months, beyond the twelve month extension it had already received from the Board – The Board found that s. 89(2) only allows one extension for up to an additional 12 months – Accordingly there was no authority to permit a further extension – Application dismissed

BEFORE: *Tanja Wacyk*, Vice-Chair, and Board Members *J. A. Rundle* and *C. Phillips*

DECISION OF THE BOARD; August 12, 2009

BACKGROUND:

1. This is an application made by the Canadian Union of Public Employees ("CUPE") under section 89(2) of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act") for the Board's consent to continue the applicant's trusteeship over Canadian Union of Public Employees, Local 4276 (which appears to include Local 4276-01). The initial request was that the trusteeship be extended for a further period of 12 months.

2. CUPE first placed its Locals 4276 and 4276-01 under trusteeship on August 13, 2007. Pursuant to CUPE's request, that trusteeship was extended for 12 months to August 12, 2009 by the Board [differently constituted] on July 29, 2008. CUPE now seeks an additional extension for a further twelve months, to August 13, 2010.

3. By decision dated August 6, 2009, the Board [differently constituted] indicated it was not at all clear the Board has the authority to grant an extension beyond the additional 12 months CUPE's trusteeship has already been extended. CUPE was given until August 10, 2009 to make submissions in that regard, and has done so.

APPLICABLE STATUTORY PROVISION:

4. The applicable provision is section 89:

> **89.** (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.
>
> (2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than 12 months from the

> date of such assumption, but such supervision or control may be continued for a further period of 12 months with the consent of the Board.

CUPE SUBMISSIONS AND BOARD ANALYSIS:

5. CUPE advises that its attempts to develop internal leaderships within the affected locals have failed, and efforts are currently underway to merge the locals with similar and complementary locals. However, that process cannot be completed prior to the expiration of the current trusteeship. In its submission, CUPE also amended its request and asked that the trusteeship be extended until November 1, 2009.

6. CUPE's request that the Board extend its trusteeship is unopposed.

7. In support of its request, CUPE relies on the Board's decision in *International Association of Bridge, Structural and Ornamental Iron Worker, Shopmen's Local Union 834*, [1993] O.L.R.D. No. 2702, in which the majority of the panel granted an extension. However, the Vice-Chair, in his dissent stated:

> I agree with my colleagues that there are good reasons to continue the trusteeship which, on the material before us, is in the best interests of the members of Local 834; moreover, as they have correctly stated, none of those individuals oppose the International Union's request for an extension. However, I am unable to read section 84 [now section 89(2)] in the permissive fashion of the majority, and for that reason (but for that reason alone) I would not have granted consent.

8. CUPE also relies on the Board's decision in *Local 10 of the International Union of Bricklayers and Allied Craftworkers*, (Board File No. 2334-96-T dated October 7, 1997, unreported), where in a short decision, the Board wrote as follows:

> 1. This is an application brought pursuant to section 89(2) of the *Labour Relations Act*, 1995, requesting that the supervision be continued until a decision is made in Board File No. 1689-96-U.
>
> 2. The receivership has for the past eight months concerned itself with periodic meetings between the International Union and the Local to review the financial situation of Local 10.
>
> 3. The International's request is made in the context of the fact that since at least August 1996 the Local has run its financial affairs in a proper manner.
>
> 4. The application arises in an unusual set of conditions in that the Bill 80 case in Board File No. 1689-96-U is ongoing. It is that case which will deal with all the issues that led to the supervision in the first place.
>
> 5. In light of all the circumstances in the case before me and in particular to allow Vice-Chair Petryshen who is hearing the case in Board File No. 1689-96-U all the latitude to deal with any and all remedies if any in the case before him, I would limit the supervision to

> one meeting every two months to deal with financial issues only. These meetings may be cancelled on a consent basis between the parties.
>
> 6. This order is to run until the issuance of the decision by Vice-Chair Petryshen in Board File No. 1689-96-U.

9. In our view, the above decision is an exception to the Board's jurisprudence. This was also the view of the panel in *United Brotherhood of Carpenters and Joiners of America*, [1998] OLRB May/June 489, in which the Board made the following observations at paragraph 23:

> 23. This decision [in Board File No. 2334-96-T] is of little assistance, as it does not set out the factual context of the issue, nor does it offer any guidance as to the jurisdictional basis for the orders made therein.

10. More representative of the Board's jurisprudence than the two decisions relied on by CUPE, is the Board's analysis in *Operative Plasterers' and Cement Masons' International Association of the U.S.A. and Canada,* [1978] OLRB Rep. March 223. At paragraph 12 of that decision, the Board made the following comments concerning the balance achieved by what is now section 89:

> 12. In essence then, section 73 [now 89] appears to be an attempt by the Legislature to balance the legitimate interests of a union which may require the suspension of a local's autonomy against the desirability of local self-government through officers elected by, and responsible to, the local membership. The section allows a full twelve months in which a union can resolve the problems which led to the trusteeship being imposed. The very existence of such a time limit should prompt responsible union officials to move with reasonable dispatch to correct the problems which led to the imposition of the trusteeship. The section, however, also makes allowance for the fact that not every problem which leads to a trusteeship being imposed may be able to be resolved in 12 months, and thus some flexibility has been provided by stipulating that trusteeships can be continued for a further period of 12 months with the consent of the Board. Because of the Act's obvious concern with the length of trusteeships, the most reasonable interpretation of the section is not that a trusteeship must be extended for a further 12 month period in every case, but rather that it can be extended for any period of time up to 12 months...

11. The *Operative Plasterers'* decision has been cited with approval in a number of subsequent trusteeship cases before the Board, and it is our view that it accurately reflects the legislative intent behind section 89. The guiding principle is that any suspension of the autonomous operation of a union local should be resolved as quickly as possible. Section 89(1) gives the entity assuming supervision or control a full 12 months to resolve the issues giving rise to the suspension. The expectation is that 12 months will be the norm. However, if appropriate, section 89(2) allows the Board to extend the suspension for an additional 12 months. Section 89, as currently drafted, does not contemplate the possibility of still another extension, allowing potentially three years for a union to get its house in order.

12. Consequently, the Board is without the authority to grant the further extension requested by the applicant, and the application is denied.

13. CUPE is directed to post this decision in the same locations it has posted the notices to all members of Local 4276 (including Local 4276-01) and a copy of its application to extend its trusteeship at the workplace, where they will come to the attention of all employees in the bargaining units represented by Local 4276 and 4276-01.

0367-07-R; 0368-07-R; 0369-07-R; 0370-07-R; 0371-07-R; 0372-07-R Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Cope Construction and Contracting Inc.,** Responding Party v. International Brotherhood of Electrical Workers, Local 530, Intervenor #1; v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Intervenor #2; v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks International Association of the United States and Canada, Local 598, Intervenor #3; International Union of Operating Engineers, Local 793, Intervenor #4; Millwrights Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592, Intervenor #5; Sheet Metal Workers International Association Local 539, Intervenor #6; International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America Local Union 880, Intervenor #7; United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663, Intervenor #8; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Goodfellow Construction Ltd., Responding Party v. International Brotherhood of Electrical Workers, Local 530, Intervenor #1; v. Teamsters Construction Council and International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America Local Union 880, Intervenor #2; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Intervenor #3; v. Millwright Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592; Intervenor #4; Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local 598, Intervenor #5; International Union of Operating Engineers, Local 793, Intervenor #6; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663, Intervenor #7; Sheet Metal Workers' International Association, Local 539, Intervenor #8; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Curran Contractors Ltd., Responding Party v. International Brotherhood of Electrical Workers, Local 530, Intervenor #1; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Intervenor #2; Millwright Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592, Intervenor #3; International Union of Operating Engineers, Local 793, Intervenor #4; Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local 598, Intervenor #5; Teamsters Construction Council and International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America Local Union 880, Intervenor #6; Sheet Metal Workers' International Association, Local 539, Intervenor #7; United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the

United States and Canada Local Union 663, Intervenor #8; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Klompstra Construction Limited, Responding Party v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local 598, Intervenor #1; International Brotherhood of Electrical Workers, Local 530, Intervenor #2; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Intervenor #3; Millwrights Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592, Intervenor #4; Teamsters, Construction Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880, Intervenor #5; United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663, Intervenor #6; International Union of Operating Engineers, Local 793, Intervenor #7; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. C&C Enterprises, Responding Party v. International Brotherhood of Electrical Workers, Local 530, Intervenor #1; v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Intervenor #2; Millwright Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592, Intervenor #3; International Union of Operating Engineers, Local 793, Intervenor #4; Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local 598, Intervenor #5; Sheet Metal Workers' International Association Local 539, Intervenor #6, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663, Intervenor #7; Teamsters Construction Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880, Intervenor #8; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Maaten Construction Ltd., Responding Party v. International Brotherhood of Electrical Workers, Local 530, Intervenor #1; v. Teamsters Construction Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880, Intervenor #2; Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local Union 598, Intervenor #3; Sheet Metal Workers International Association Local 539, Intervenor #4; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Intervenor #5; Millwright Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592, Intervenor #6; International Union of Operating Engineers, Local 793, Intervenor #7; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663, Intervenor #8

Bar – Certification – Construction Industry – Project Agreement – The responding parties and intervenors sought dismissal of these applications for certification, arguing that the construction labourers working on the application date were employed pursuant to project agreements that pre-dated the applications – Potential parties to the project agreement had been properly notified and no timely objection was raised – The applicants argued that s. 163.1 applies only to projects in the industrial, commercial or institutional sectors, and the projects at

issue were outside the ICI sector, so they could never be the subject of the agreements – The Board found that paragraph 1 of subsection 163.1(14) establishes that the work performed subject to a project agreement is limited by a trade union's jurisdiction, and not by a sector – Once the objection period to a project agreement has passed and the agreements come into force, sector becomes irrelevant – The project agreements were valid when the applications were made – Applications dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Lorne A. Richmond* and *Harold Bartlett* for the applicant; *Walter Thornton* and *Andy Pilat* for the responding parties other than Curran Contractors Ltd.; *Walter Thornton, Andy Pilat* and *Ray Curran* for Curran Contractors Ltd; *Jesse Nyman* and *Dale Quinn* for the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128; *Jesse Nyman* and *Jim Wodham* for the Millwrights Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592; *Jesse Nyman* and *Tony Mollica* for the Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local 598; *Jesse Nyman* and *Vince Prout* for the International Union of Operating Engineers, Local 793; *Jesse Nyman* for the Teamsters Construction Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; *Donald K. Eady* for the International Brotherhood of Electrical Workers, Local 530 and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663; *John Moszynski* and *Jim Bradshaw* for the Sheet Metal Workers' International Association, Local 539.

DECISION OF THE BOARD; July 16, 2009

1. These are six applications for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") in which the responding parties and intervenors move to have the Board dismiss the applications on the grounds that section 163.1(16) of the Act prevents the applicant from obtaining certification in these proceedings.

2. These applications relate to the construction labourers employed by the responding parties who were working at one of two construction projects in Board Area 2 on the date of application: the Greenfield Energy Centre ("Greenfield") and the St. Clair Energy Centre ("St. Clair"). The only persons who were at work in the bargaining units in each of these six applications on the application date were construction labourers working at either the Greenfield or St. Clair projects who had been referred to work at those two projects by the Labourers' International Union of North America, Local 1089 ("Local 1089"). The responding parties and the intervenors asserted those construction labourers were employed at those two projects pursuant to project agreements that had come into force before these applications were filed. The applicant submits those project agreements cannot, in law, apply to those projects and therefore the construction labourers were not employed pursuant to any project agreements or any other collective agreements.

3. The Board, differently constituted, by decision dated February 7, 2008 in these six applications, established the procedure the panel of the Board scheduled to hear these applications would follow in dealing with the host of preliminary issues raised by the applications, responses and interventions the parties had filed. Paragraph 10(a)-(e) of the Board's February 7th decision described the issues the parties were to address at the hearings before me as follows:

(a) whether sections 163.1(15) and (16) of the Act bar these applications for certification;

(b) whether the applications should be dismissed, or whether the applicant should be estopped from taking the position that the work being done under the two Project Agreements is outside the ICI sector of the construction industry, because the applicant failed to object to the Project Agreements in accordance with section 163.1(3) of the Act;

(c) whether the Board should dismiss the applications because they constitute an abuse of process or an improper collateral attack upon the two Project Agreements;

(d) whether the Board should dismiss the applications because there were no employees at work in the bargaining unit on the application filing date because the work performed was work in the ICI sector of the construction industry; and

(e) whether the applications are untimely and should be dismissed because they were not made during an open period contained in the Act.

4. The parties agreed all the individuals who are the subject of these applications were all employed as construction labourers by the responding parties on the date the applications were filed and were working at either the Greenfield or the St. Clair projects. The responding parties and the intervenors rely on the project agreements they say are applicable to those two projects. Subject to the applicant's argument that the two project agreements, as a matter of law, cannot apply to those two projects, those project agreements came into force pursuant to section 163.1(10) and were in force on the date these six applications were filed. Section 163.1(10) of the Act provides:

> A project agreement comes into force upon the Board making an order declaring that the proposed project agreement is in force or, if the project agreement is not challenged under subsection (9), upon the expiry of the time period for making such a challenge.

No challenge to either project agreement was made under section 163.1(9) of the Act.

5. Section 163.1 of the Act establishes a process by which the owners, contractors, subcontractors, trade unions and employees who are or may be involved in the creation, development and construction of "economically significant" construction projects can become subject to a labour relations regime over which they have control and, more importantly, can avoid being bound by the provincial collective bargaining negotiations and provincial collective agreements applicable to the industrial, commercial and institutional sector of the construction industry for the work performed at those construction projects. In essence, the participants in a construction project covered by a project agreement will not have to face the possibility of a disruption to the work on that project that might otherwise take place should a provincial strike or lockout occur pursuant to section 164 of the Act following an impasse in provincial bargaining during the duration of the project agreement. As the Board observed in *Sarnia Construction Association*, [1999] OLRB Rep. Sept./Oct. 884 at 889:

> Certainty and stability in the construction of a significant industrial project are, in my view, at least two of the objects of section 163.1 of the Act.

6. The foundation for the applicant's assertion that the project agreements cannot be a bar to these applications is that the two projects do not come within the industrial, commercial and institutional sector of the construction industry. The applicant argues that section 163.1 is intended to apply to only industrial projects. Construction projects that are outside the industrial, commercial and institutional sector of the construction industry cannot be made subject to a project agreement.

7. The responding parties and intervenors contend there is nothing in section 163.1 that prevents or prohibits a project agreement from covering construction projects, construction work or any other kinds of work not within the industrial, commercial and institutional sector of the construction industry. They submit the construction industry sector within which the Greenfield and St. Clair projects come became irrelevant once the time had lapsed for applying to the Board under section 163.1(3) of the Act for an order that those projects may not be the subject of a project agreement. Section 163.1(3) provides:

> (3) A bargaining agent on the list may apply to the Board for an order that a project may not be the subject of a project agreement and the following apply with respect to such an application:
>
> 1. The application must be made within 14 days after receiving the notice that the proponent wishes to have a project agreement.
> 2. The parties to the application are the applicant, the proponent and such other persons as may be prescribed under the regulations or as may be specified by the Board in accordance with the regulations.
> 3. The Board shall dismiss the application if the project is an industrial project in the industrial, commercial and institutional sector of the construction industry.
> 4. The Board shall dismiss the application if the project is designated in the regulations as a project that may be the subject of a project agreement.
> 5. If neither paragraph 3 nor 4 apply, the Board shall grant the application and make an order that the project may not be the subject of a project agreement.
> 6. An order under paragraph 5 does not affect the preparation of another list and the giving of other notices under subsection (1) even if they relate to the same project.

8. The applicant points to section 163.1(1) which sets out the entities that are required to receive notice of a proposed project agreement, and to section 163.1(2) which restricts the bargaining agents that may be parties to the project agreement to only those trade unions bound by a provincial agreement. Sections 163.1(1) and 2 provide:

> (1) A proponent of a construction project or a group of construction projects who believes that the project or projects are economically significant and who wishes to have a project agreement for the project or projects shall do the following:
>
> 1. Create a list of potential parties to the agreement, consisting of bargaining agents, subject to subsection (2).

> 2. Give each bargaining agent on the list a notice that the proponent wishes to have a project agreement and include with the notice a copy of the list, a general description of each of the projects which are proposed to be covered under the agreement and the estimated cost of each project.
> 3. Give a copy of the notice to each employee bargaining agency to which any of the bargaining agents on the list belong.
> 4. Give a copy of the notice to each employer bargaining agency that is a party to a provincial agreement by which a bargaining agent on the list is bound.
> 5. Give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list.
>
> (2) The following apply with respect to the list of potential parties created by the proponent:
>
> 1. A bargaining agent may be included on the list only if it is bound by a provincial agreement.
> 2. A bargaining agent may be included on the list only if the proponent anticipates that any project that is proposed to be covered under the project agreement may include work within the bargaining agent's geographic jurisdiction for which the bargaining agent would select, refer, assign, designate or schedule persons for employment.

The applicant argues that the structure of section 163.1 and its placement in the portion of the Act relating specifically to the industrial, commercial and institutional sector of the construction industry must mean only projects that come within that sector of the construction industry can be subject to a project agreement contemplated by section 163.1. The applicant contends it is fundamental for an agreement to be considered a project agreement under the Act that the project to which it relates must be, at the very least, in the industrial, commercial and institutional sector of the construction industry even if it is not an "industrial" project. If the construction project in issue is not a project within the industrial, commercial and institutional sector then any purported project agreement made to apply to that project cannot be used to prevent an otherwise timely certification application from proceeding.

9. The applicant submits projects that are outside the industrial, commercial and institutional sector do not need a legislative foundation for an agreement applicable to all trades working on that project for the duration of the project to be effective. The applicant argues that the heart of the province wide bargaining regime established by the Act is section 163(2). Section 163(2) of the Act provides:

> A provincial agreement is, subject to and for the purposes of this Act, binding upon the employer bargaining agency, the employers represented by the employer bargaining agency, the employee bargaining agency, the affiliated bargaining agents represented by the employee bargaining agency, the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126, and upon such employers, affiliated bargaining agents and employees as may be subsequently bound by the said agreement.

Section 163(2) makes clear that all employers for whom affiliated bargaining agents hold bargaining rights are bound by the same collective agreements, without exception, for work they do in the industrial, commercial and institutional sector of the construction industry. That provision is the foundation for certification, collective bargaining, strikes, lock-outs and ratification votes in respect of the industrial, commercial and institutional sector of the construction industry. It establishes a common ground for all the employers working in the industrial, commercial and institutional sector for which an affiliated bargaining agent holds bargaining rights and for the affiliated bargaining agents that represent the employees of those employers.

10. The exception carved out from the mandatory application of provincial agreements to work in the industrial, commercial and institutional sector done by employers for which affiliated bargaining agents hold bargaining rights established by section 163 of the Act by having a project agreement in place under section 163.1 is narrow and specific. The applicant submits that exception should be strictly construed because it creates an exclusion from what is an otherwise universal mandatory scheme of collective bargaining and because project agreements established under section 163.1 prevent trade unions and their members from exercising the statutory rights they would otherwise have to apply for and obtain bargaining rights in respect of non-union employers working under project agreements.

11. Moreover, those sorts of agreements, if applicable to projects outside that sector, can be abused and deprive both trade unions and their members' employers of opportunities to perform work they would otherwise have been able to undertake. The applicant suggests that if for example, parties wished to develop a project agreement for the construction of a new major highway, there is nothing in the Act that would prevent them from doing so. The trade unions and contractors involved in that road construction project would not need to follow the procedures in section 163.1 of the Act to achieve an agreement limited in geographic scope and duration to that highway project. The parties would be free to enter into whatever arrangements suited them because a highway construction project is not in the industrial, commercial and institutional sector and therefore would not be subject to the provincial bargaining scheme established by the Act. The applicant submits that while a construction project outside the industrial, commercial and institutional sector can be the subject of an agreement applicable to the entire project for the duration of that project such an agreement, which would not be a project agreement under section 163.1 of the Act, would not have the statutory insulation protecting the non-union employers working under that agreement from their employees and the unions that represent those employees exercising their statutory rights to obtain certification.

12. The applicant suggests that trade unions and contractors that wanted to expand beyond doing work in the industrial, commercial and institutional sector could use the project agreement provisions of section 163.1 to prevent rival unions and competing contractors from getting access to that major highway project. It refers to section 163.1(3) of the Act to point out that notice of a purported project agreement is only given to trade unions bound by provincial agreements that have geographic jurisdiction over the project and their respective employee and employer bargaining agencies. The first part of section 163.1(3) states:

> A bargaining agent on the list may apply to the Board for an order that a project may not be the subject of a project agreement …:

The applicant contends only the local unions receiving notice of the proposed project agreement can object to it under section 163.1(3) on the grounds that the project is not an industrial project. Neither

the employer nor employee bargaining agencies affected by the proposed project agreement would have standing under section 163.1(3) to object to it.

13. The applicant in the example it uses argues that notice need not be given to the employer associations and trade unions that normally carry out road building work. In that circumstance, there would be no reason for the local unions getting notice of the project agreement to object to it since they and their members would benefit while their rival unions and their contractors that would otherwise have an interest in objecting to it would not be able to do so. The applicant submits the Board must ensure the integrity of the project agreement process by not allowing a project agreement that purports to apply to a project that is outside the industrial, commercial and institutional sector to be a bar to an otherwise timely certification application.

14. The responding parties and intervenors do not concede the St. Clair and Greenfield projects are outside the industrial, commercial and institutional sector. The sector issue is irrelevant once the project agreements came into force under the Act, they contend. They submit the applicant, either because it is part of the Labourers' Employee Bargaining Agency or because Local 1089, a constituent member of the applicant, had notice of the project agreements but did not raise any objection to them, should not now be permitted to proceed with these applications by claiming the project agreements are not valid since the projects to which they relate are not in the industrial, commercial and institutional sector of the construction industry.

15. Section 163.1 of the Act, as the responding parties and intervenors submitted, is designed to provide stability and certainty to the participants, that is, the owners, contractors, subcontractors, trade unions and employees engaged in a massive construction project that may take several years to complete. A project agreement ensures work will continue without disruption when provincial agreements in the industrial, commercial and institutional sector are being negotiated. The owners, contractors and subcontractors will know what the wages and working conditions will be for the duration of the project, and will have access to the necessary labour and skilled trades required to complete the project in a timely way. The trade unions will have access to contractors for which they may not have bargaining rights and their members will have work opportunities available with employers that would otherwise have no obligation to employ them for the duration of the project. In effect, all employers working on the project, regardless of whether any trade union holds bargaining rights for them, would be required to apply the terms and conditions of the relevant provincial agreement as modified by the project agreement, even if they were not legally bound by a collective agreement, to all work they do on the project, including the obligation to obtain employees from the local union hiring hall and the obligation to remit the requisite union dues and fund contributions.

16. The provincial agreements in the industrial, commercial and institutional sector of the construction industry become the starting point for a project agreement. The provincial agreement in respect of each trade at work on the project, as modified by the project agreement, applies to all work being done on the project whether or not the contractors doing that work are bound by a provincial agreement. Section 163.1(14) of the Act establishes the impact of the project agreement on the project to which it applies. Section 163.1(14) provides:

> (14) The following apply with respect to projects to which a project agreement applies:

> 1. The project agreement applies to all construction work on the project that is within the jurisdiction of a bargaining agent on the list.
> 2. Each applicable provincial agreement, as modified by the project agreement, applies to the construction work on the project, even with respect to employers who would not otherwise be bound by the provincial agreement.
> 3. Subject to the project agreement, if a provincial agreement ceases to apply while the project agreement is in effect, the provincial agreement that applied when the project agreement was approved applies to the construction work on the project until a new provincial agreement is made. However, this paragraph does not apply with respect to provincial agreements that apply to work that the project agreement does not apply to.
> 4. No employees performing work to which the project agreement applies shall strike and no employer shall lock-out such employees while the project agreement is in effect even if a strike is called or authorized under subsection 164 (1) or a lock-out is called or authorized under subsection 164 (2).
> 5. For greater certainty, paragraph 4 does not affect the right to strike of an employee who performs work to which the project agreement does not apply nor does paragraph 4 affect the right of the employer to lock-out such an employee.

Section 163.1(14)¶1 makes clear that the project agreement applies to "all construction work on the project that is within the jurisdiction" of the trade unions given notice of the project agreement. That paragraph does not limit the work that is subject to the project agreement to work coming within the industrial, commercial and institutional sector. Rather, it establishes that the scope of the work subject to a project agreement is limited by only a trade union's jurisdiction and not by sector. Indeed, a large construction project may involve work that comes within more than one sector. See for example *Steen Contractors Limited,* [1989] OLRB Rep. Nov. 1173; *Barclay Construction Group Inc.*, [2008] OLRB Rep. Mar./Apr. 136 (April 8, 2008). All construction work done at the project is subject to the project agreement regardless of the sector within which that work might come.

17. The irrelevance of "sector" to the scope and applicability of a project agreement once the time for objection to it under section 163.1(3) has passed is, I believe, reinforced by the opening words section 163.1(16) of the Act. Section 163.1(16) prevents a union from obtaining bargaining rights for an employer using that union's members to do work under a project agreement based on the employment of its members with that employer if that union meets conditions established by section 163.1(15), that is, that union does not have bargaining rights for that employer and that union received notice of the coming into force of the project agreement. Sections 163.1(15) and (16) provide:

> (15) Subsection (16) applies if,
>
> (a) a trade union is a bargaining agent that received notice of the coming into force of a project agreement under subsection (11);
> (b) the trade union does not have bargaining rights with respect to employees of an employer; and
> (c) the employer employs members of the trade union to perform work on a project that is governed by that project agreement.

> (16) *Regardless of whether the work the members of the trade union perform is inside or outside of the construction industry,* if the circumstances set out in subsection (15) apply, [emphasis added]
>
> (a) the employment of the members of the trade union before the project is completed or abandoned shall not be considered in any application for certification by the trade union with respect to the employer; and
>
> (b) any agreement under which the employer agrees to employ only members of the trade union for that work before the project is completed or abandoned but not afterwards shall be deemed not to be an agreement voluntarily recognizing the trade union as the exclusive bargaining agent of those employees.

Sections 163.1 (15) and (16) of the Act contemplate union members be will working under a project agreement but in the course of doing so, may not be engaged in work within the construction industry from time to time. Moreover, there is nothing in sections 163.1(1) or 163.1(2) that limits the application of a project agreement to projects within the industrial, commercial and institutional sector of the construction industry. Indeed, section 163.1(1) only requires a construction project be "economically significant" in the opinion of its proponent for a project agreement to be proposed for a project. That provision is silent about the sector in which that project might be. Thus, I find the Act does permit a project agreement to encompass work outside the industrial, commercial and institutional sector of the construction industry.

18. I note parenthetically the Act does not in a similar fashion preclude a provincial agreement within the meaning of section 163(2) of the Act covering work that is outside the industrial, commercial and institutional sector or work that may not even be in the construction industry. See *London Sandblasting and Painting Ltd.,* [1982] OLRB Rep. Sept. 1322; *Arlington Crane Service Limited,* [1988] OLRB Rep. Dec. 1187. Whether a particular employer is obliged to apply a provincial agreement to work outside the industrial, commercial and institutional sector is a different issue. See *Fred Jantz Masonry Construction Co. Ltd.,* [1981] OLRB Rep. Sept. 1229.

19. Both the applicant by virtue of being a part of the Labourers' Employee Bargaining Agency and Local 1089 received the requisite notices under section 163.1(1) and 163.1(11) and Local 1089 received notice of the proposed project agreements under section 163.1(5). Local 1089 when it advised the proponents of the project agreements it agreed to them giving the notice wrote:

> This agreement for Notice is made without prejudice to which sector within the construction industry that the above noted project may fall.

Local 1089 purported to reserve its "right" to raise the sector question but did not apply to the Board under section 163.1(3) for an order that the projects may not be the subject of a project agreement. Local 1089 ultimately gave notice under 163.1(8) of its approval of each project agreement.

20. While the responding parties also relied on the doctrine of estoppel based on the conduct of Local 1089 to challenge the applicant's contention that the project agreements cannot apply to these two projects because they are not within the industrial, commercial and institutional sector,

there is no need for me to determine that issue. It is immaterial to the result that Local 1089 both agreed to the giving of the notice and gave notice of its approval of the project agreements.

21. The Act makes clear that the time to challenge the applicability of the project agreements within the meaning of section 163.1 to the Greenfield and St. Clair projects expired 14 days after notice was given that the proponents wished to have project agreements for those two projects. Section 163.1(3)¶3 and ¶5 provide that if the project is not an industrial project (or is not designated in the regulations as a project that may be the subject of a project agreement) the Board must make an order that the project may not be the subject of a project agreement. Once that time has elapsed, and more importantly, once the project agreement comes into force under section 163.1(10) and notice of it coming into force has been given to the affected trade unions and employee bargaining agencies, then the project agreement is in force and applies, according to section 163.1(14)¶1 of the Act, "to all construction work on the project within the jurisdiction" of the trade unions that received notice under sections 163.1(1), 163.1(5), and 163.1(11) of the Act.

22. In my view section 163.1 of the Act requires an objection to a project agreement being contemplated for a construction project based on the proposed project not coming within the industrial, commercial and institutional sector being made at the very beginning of that project's development. To adopt the analysis urged on me by the applicant would create tremendous uncertainty and foster litigation if the validity of a project agreement could be attacked well after construction was underway on the project to which it applies. Determining the sector within which certain work at a project or the entire project falls is not an exact science. Indeed, the nature and character of a project may evolve during its construction. It is because the boundaries between sectors of the construction industry are not crystal clear and are open to debate that the Act mandates that a project agreement must apply to all construction work within the jurisdiction of the unions that received notice of the project agreement on the project that is the subject of a project agreement. I therefore agree with the responding parties and intervenors when they say the sector issue that could have arisen in relation to the Greenfield and St. Clair projects was no longer relevant or material to the applicability of the project agreements once the project agreements came into force.

23. Whether trade unions and employers can develop strategies to promote their self interest based on the provisions of section 163.1 is not a matter that compels an interpretation of the Act that would be inconsistent with the certainty and stability established by section 163.1 for "economically significant" construction projects covered by a project agreement.

24. I am satisfied the project agreements at the Greenfield and St. Clair projects were valid under section 163.1 and in force at the time these applications for certification were filed.

25. The applicant did not, as I understood its submissions, claim these certification applications were not barred even if the project agreements were applicable to and in force at these projects. The applicant did not concede section 163.1(16) would apply to these certification applications if the Board found the project agreements applied to the Greenfield and St. Clair projects even if those projects were not in the industrial, commercial and institutional sector. The applicant did not, however, assert it could rely on the employment of its members at the Greenfield and St. Clair projects to sustain these applications even if the Board held the project agreements covering those two projects were valid.

26. The construction labourers who are the subject of these applications were all employed by the responding parties on the application date to perform work on projects that were covered by project agreements. As such, the employment of those individuals, by reason of section 163.1(16)(a) of the Act, cannot be considered in these applications for certification.

27. In the result, as the only persons in the bargaining units were individuals who cannot be considered employees for purposes of these applications, the Board must find there were no employees at work in each of the bargaining units on the application date.

28. These applications are therefore dismissed.

0516-07-R Electrical Power Systems Construction Association, Applicant v. Labourers' International Union of North America, Ontario Provincial District Council, Responding Party v. Canadian Union of Skilled Workers, Intervenor

Accreditation – Construction Industry – Employer – Among other matters, the trade unions attacked the "employer authorizations" as insufficient for the applicant to rely upon – The Board read the two definitions in the Act of "employers' organization" together and found that an employers' organization "represents" an employer for the purposes of the Act in relation to an accreditation application when that employer authorizes or appoints that organization to act on its behalf in relation to the regulation of relations between employers and employees – The Board found that an employer, on becoming a member of the applicant, was bound by the applicant's constitution and from that it was apparent that every employer who was a member of the applicant at the time the application was made was, for the purposes of s. 136(1)(b) represented by the applicant – Furthermore, while the authorizations could certainly have been more explicit, the Board found that they clearly authorized the applicant to represent them in collective bargaining – The Board found that at the least eleven of thirteen employers had vested authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent – Certificate of Accreditation issued

BEFORE: *Harry Freedman*, Vice-Chair, and Board Members *John Tomlinson* and *Alan Haward*.

APPEARANCES: *M. Patrick Moran, Ivars Starasts* and *Jon Wolfe* for the applicant; *Lorne A. Richmond* and *Harold Bartlett* for the responding party; *Lorne A. Richmond* for the Canadian Union of Skilled Workers.

DECISION OF THE BOARD; August 17, 2009

1. This is an application for accreditation made pursuant to section 134 of the *Labour Relations Act, 1995*, c. 1, as am. (the "Act") in which the applicant seeks to be accredited as the bargaining agent of all employers of employees for whom the responding party (the "OPDC") holds bargaining rights in the electrical power systems sector of the construction industry engaged in construction work in that sector on the property of Ontario Power Generation Inc., Bruce Power LP, or Hydro One Inc. in the province of Ontario.

2. The OPDC has sought the dismissal of this application on a number of grounds, some of which have been the subject of earlier decisions issued by the Board.

3. The Board in its decision in this matter dated September 29, 2008 dealt with the OPDC's objection to the bargaining unit proposed by the applicant. In that decision, the Board wrote:

> ...we find that the bargaining unit of employers limited to employers of construction labourers for whom only the OPDC and not LIUNA holds bargaining rights is an appropriate unit of employers within the meaning of section 135(1) of the Act. For the purposes of clarity, the employers of construction labourers for whom the OPDC holds bargaining rights as a result of sections 146(2) and 146(3) of the Act based on the bargaining rights held by LIUNA do not come within scope of the unit of employers the Board finds appropriate in this proceeding.

The parties subsequently met with a Labour Relations Officer to attempt to reach an agreement on the precise description of the bargaining unit.

4. Based on the results of the parties' discussions with the Labour Relations Officer, together with the material filed by the applicant and the submissions of the OPDC, the Board, pursuant to section 135(1) of the Act finds the following unit of employers is appropriate for collective bargaining:

> all employers of employees who are represented by the Labourers' International Union of North America, Ontario Provincial District Council in the following bargaining unit:
>
> > all employees and foremen as defined below engaged in all construction industry work* performed in the electrical power systems sector in the Province of Ontario on Ontario Power Generation Inc. (OPGI) Hydro One and Bruce Power LP property for the bulk power system, save and except the building of commercial-type office facilities at urban locations remote from operating facilities.
> >
> > *the work performed is deemed to be under the responsibility of the Engineering and Construction Services Branch. The work encompasses:
> >
> > - construction of new facilities
> > - additions to existing facilities
> > - major - modifications
> > - rehabilitation
> > - reconstruction of existing facilities.
> >
> > For the purpose of clarity, the bulk power system comprises generating stations, hydraulic works, heavy water facilities, transmission lines (voltages over 50kV), transmission stations, microwave and repeater stations.
> >
> > The work described above shall also include work on property acquired by Ontario Power Generation Inc. (OPGI), Hydro One and Bruce Power LP for:

(a) the supply or aggregate and concrete used in the construction of said facilities; and

(b) ancillary material yards which are defined as property acquired by Ontario Power Generation Inc. (OPGI), Hydro One and Bruce Power LP for the storage of materials to be used on a project by Employers.

The term "employee" shall include all employees in the classifications set out below:

Group I	Watchman
Group II	Labourer Heaterman Power Sweeper Operator Siamese Blowgun Operator Carpenter Helper Flagman Signalman Spotter Janitorial Cleaner (Construction Site) Area Captain (BHWP)
Group III	Formworker (Lakeview and Pickering Projects only
Group IV	Conveyor Belt Attendant Scaler Wrecker – Demolition of Complete Buildings Yardman – Used Building Materials Form Stripper Powderman Helper Air Track Driller Helper Bricklayer Helper/Mason Tender Stressing Operating Helper – Post-Tensioning and Prestressing Caulker including Tile and Concrete Pipe Grouter Operator (not machine) Portable Compressor Operator Small Pump Operator Pipe Layer Small Mixer Operator
Group V	Concrete Worker Floatman Puddler Screedman Mortarman
Group VI	Air Tool Operator

Concrete Core Drill Machine Operator
Jackhammer Operator
Tamper Operator
Chainsaw Operator
Vibrator Operator
Electrical Tool Operator
Pressurized Grouterman
Bomag Operator
Scootcrete Operator
Chipping Hammer Operator
Concrete Breaker
Jackleg Operator
Rocksplitter Operator
Farm Tractor Operator
Tool Crib Attendant
Building Labourer (Lines and Stations only)
Stump Cutter Operator
Stress Operator Post-Tensioning and Prestressing
Welder – Post-Tensioning and Prestressing

Group VII Powerman

Group VIII Air Trac/Hydraulic Drills and Self-Propelled Hydraulic Drills

Group IX Diamond Driller

The term "employee" shall not include Labourers employed by an Employer signatory to the national Agreement for Canada, Stacks-Chimneys-silos, when performing work covered by the scope of that agreement.

The term "foreman" shall include all foreman between the ranks of, but not including, working foreman and general foreman, save and except those described hereunder.

Labour foremen employed by an employer signatory to the National Agreement for Canada, Stacks-Chimneys-silos, when performing work covered by the scope of that agreement.

save and except employers bound to the collective agreement between the Electrical Power Systems Construction Association and the Labourers' International Union of North America.

5. An applicant seeking accreditation under the Act for employers in the construction industry engaged in work outside the industrial, commercial and institutional sector must satisfy the Board it has met the requirements established by sections 134 to 136 of the Act. An application for accreditation that does not relate tc the industrial, commercial and institutional sector of the construction industry may only be made where a trade union holds bargaining rights for a bargaining unit of employees of more than one employer or is party to collective agreements with more than one

employer for a bargaining unit of employees in the construction industry. In those circumstances, the applicant must demonstrate it represents a majority of the employers in the bargaining unit found appropriate by the Board that have had employees represented by that trade union within one year of the application and that such majority of employers employed a majority of the employees of all the employers in the bargaining unit at the time the application for accreditation was made.

6. Sections 134 to 136 of the Act provide as follows:

> 134. Where a trade union or council of trade unions has been certified or has been granted voluntary recognition under section 18 as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area described in the said certificates, voluntary recognition documents or collective agreements, as the case may be.
>
> 135. (1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.
>
> (2) The unit of employers shall comprise all employers as defined in section 126 in the geographic area and sector determined by the Board to be appropriate.
>
> 136. (1) Upon an application for accreditation, the Board shall ascertain,
>
> (a) the number of employers in the unit of employers on the date of the making of the application who have within one year prior to such date had employees in their employ for whom the trade union or council of trade unions has bargaining rights in the geographic area and sector determined by the Board to be appropriate;
>
> (b) the number of employers in clause (a) represented by the employers' organization on the date of the making of the application; and
>
> (c) the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, the payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.
>
> (2) If the Board is satisfied,
>
> (a) that a majority of the employers in clause (1) (a) is represented by the employers' organization; and

> (b) that such majority of employers employed a majority of the employees in clause (1) (c),
>
> the Board, subject to subsection (3), shall accredit the employers' organization as the bargaining agent of the employers in the unit of employers and for the other employers for whose employees the trade union or council of trade unions may, after the date of the making of the application, obtain bargaining rights through certification or voluntary recognition in the appropriate geographic area and sector.
>
> (3) Before accrediting an employers' organization under subsection (2), the Board shall satisfy itself that the employers' organization is a properly constituted organization and that each of the employers whom it represents has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.
>
> (4) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization, the Board may postpone disposition of the application to enable employers represented by the organization to vest the additional or other authority in the organization that the Board considers necessary.
>
> (5) The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the Human Rights Code, or the Canadian Charter of Rights and Freedoms.

7. The OPDC did not challenge the applicant's status as an employers' organization capable of making an application under section 134 of the Act. On the basis of the materials filed with the Board, we are satisfied the applicant is an employers' organization within the meaning of sections 1(1) and 126 of the Act. Furthermore, having reviewed the constitution and By-Law No. 1 of the applicant, the Board finds that the applicant is a properly constituted organization within the meaning of section 136(3) of the Act.

8. The Board further finds the OPDC is a trade union within the meaning of sections 1(1) and 126 of the Act that has acquired bargaining rights for a unit of employees of more than one employer in the construction industry that come within the bargaining unit described in paragraph 4 above.

9. At the continuation of the hearing of this application, the OPDC raised two further grounds for having this application dismissed.

10. The OPDC submits firstly the applicant failed to demonstrate the employers it purports to represent had provided it with the necessary authority to enable it to discharge the responsibilities of an accredited bargaining agent. In short, the OPDC contends the applicant has not provided adequate evidence that it represented a sufficient number of the employers in the bargaining unit at the time it filed this application.

11. The OPDC also submits the applicant cannot be accredited by reason of section 136(5) of the Act. The material portion of section 136(5) provides:

> The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it....

The OPDC relies on the fact that the collective agreements between it and each of the employers in the bargaining unit provides for the remittance of an amount each month for an "industry fund" that goes to the applicant. The OPDC submits having that funding obligation in its collective agreements provides financial or other support to the applicant since funding for the applicant's activities is facilitated by the OPDC and is an obligation under each collective agreement that is enforceable at the behest of the OPDC. It argues every employer in the bargaining unit affected by this application that enters into a collective agreement in respect of construction labourers coming within the bargaining unit of employees the OPDC represents must make remittances to the applicant since each collective agreement the OPDC entered into with those employers provides for those remittances.

12. The OPDC acknowledges it does not actually make any financial contribution to the applicant. Rather, it contends it provides a vehicle for payments to be made to the applicant. It is therefore providing "other support" to the applicant within the meaning of section 136(5) of the Act.

13. We disagree. The OPDC is not making any payments on its own behalf to the applicant. Moreover, the remittances made by the employers under the collective agreements are sent directly to the applicant. The money remitted under the collective agreements does not flow to the OPDC to be transmitted by the OPDC to the applicant. Rather, the payments to the applicant from employers under the collective agreements are remitted directly to the applicant.

14. While the OPDC claims it provides other support to the applicant by having the obligation to remit funds to the applicant in its collective agreements it did not suggest that it actually took steps to enforce that collective agreement obligation on behalf of the applicant nor did it contend that it sought to impose that type of provision on behalf of the applicant in each collective agreement it entered into with the employers coming within the bargaining unit. To the contrary, the OPDC made it clear it did not really want that provision to be in its collective agreements. (The OPDC argued it makes it possible for the applicant to receive funding easily from employers. It said it provided unwilling but nevertheless valuable support to the applicant.) The employers that entered into collective agreements with the OPDC resulting in them being in the bargaining unit of employers the applicant seeks to represent agreed to make remittances to the applicant through their respective collective agreements.

15. Merely agreeing to have a remittance provision in its collective agreements, albeit reluctantly, clearly does not constitute "financial support". Moreover, in our view, it is also not "other support" within the meaning of section 136(5). Employers can provide financial support to an organization that represents them in collective bargaining. There was nothing before us to suggest the OPDC compelled those employers to do so. Each employer agreed to make remittances to the applicant through their collective agreements with the OPDC. The only thing the OPDC did was agree in collective bargaining to that kind of provision in each separate collective agreement it negotiated with each of the employers coming within the bargaining unit the applicant seeks to represent. That is not, in our opinion, "other support" for an employers' organization seeking accreditation.

16. The principal focus of the OPDC was its assertion that the applicant had failed to show that the employers in the bargaining unit, or at least a sufficient number of them, had authorized the applicant represent them in collective bargaining as their accredited bargaining agent.

17. The applicant obtained what it characterized as "employer authorizations" from twelve of the thirteen employers it appears the parties agreed were in the bargaining unit as of the application date. The applicant also filed a duly executed Declaration Concerning Representation Documents Application for Accreditation, Construction Industry (Form A-95) in which it declares that the documents it had submitted in support of its application "represent documentary evidence of the representation of EPSCA employers who were employers in the unit of employers".

18. The twelve employer authorization forms filed by the applicant are not identical. The applicant filed four forms of authorization documents.

a) Seven authorization documents filed were addressed to the applicant and were in the following form:

> This is to confirm that [name omitted] has appointed Electrical Power Systems Construction Association to bargain on its behalf in respect of the bargaining rights obtained by the *Labourers' International Union of North America, Ontario Provincial District Council* in Ontario Labour Relations File No. [number omitted].

b) One authorization document filed was addressed to the OPDC and was in the following form:

> This message is to confirm our discussion last Friday, March 2, 2007 when I stated that [name omitted] has appointed the Electrical Power Systems Construction Association (EPSCA) to bargain on its behalf in respect of the bargaining rights obtained by LIUNA OPDC.

c) Two authorization documents filed were addressed to the applicant and were in the following form:

> This is to confirm that [name omitted] has appointed the Electrical Power Systems Construction Association to bargain a collective agreement on its behalf in respect of the bargaining rights obtained by the *Labourers' International Union of North America, Ontario Provincial District Council* in respect of Ontario Labour Relations Board File No. [number omitted]. This does not constitute authorization to expand bargaining rights, directly or indirectly, beyond those described in the aforesaid certificate. Any collective agreement negotiated in accordance with this letter is subject to ratification by [name omitted], which directs that it be consulted and regularly updated about the progress of collective bargaining.

d) Two authorization documents filed were addressed to the applicant and were in the following form:

> The undersigned, hereinafter called the Employer, acknowledges that the Electrical Power Systems Construction Association ("EPSCA") has filed an application at the Ontario Labour Relations Board with the file number 0516-07-R (the "Application for Accreditation") to become accredited bargaining agent for employers employing certain members of the labourers International Union of North America, Ontario Provincial District Council on Ontario Power Generation, Bruce Power, and Hydro One property.
>
> The Employer hereby vests all necessary authority in EPSCA to act as its agent and representative for the purpose of making and amending as necessary the Application for Accreditation, and to discharge its obligations as an accredited bargaining agent on Ontario Power Generation, Bruce Power, and Hydro One property.
>
> This Authorization in no way limits or detracts from the authority held by EPSCA under its Article of Incorporation, Constitution, and By-Laws.

19. The OPDC accepts that the authorization documents in the form set out in paragraph 18(d) above, if they had been filed in a timely fashion, are sufficient to establish the employers that executed them are represented by the applicant for the purpose of section 136(1)(b) of the Act. The OPDC contends the other three forms of authorization documents filed by the applicant are wholly inadequate. It points out that those ten authorization documents set out in paragraph 18(a), (b) and (c) above say nothing in respect of applying for accreditation. At most, those documents suggest the applicant has been authorized to negotiate a collective agreement on behalf of the employers that signed them. The OPDC contends authorizing an employers' organization to engage in collective bargaining is contemplated by section 57 of the Act. But authorizing collective bargaining on one's behalf is far less significant than authorizing an organization to seek and obtain accreditation. The OPDC submits the Board must be satisfied that the individual employers not only authorized the applicant to represent them in collective bargaining, but that each of them specifically authorized the applicant to apply for accreditation.

20. The OPDC contended that the applicant had to obtain specific authorizations from the employers it purports to represent to apply for accreditation and, more importantly, had to have obtained those authorizations on or before the filing of this application. The OPDC argued that being a member of the applicant is insufficient for purposes of establishing the applicant's authority to bring this application and to represent the employers in the bargaining unit. It submits that section 136(1)(b) of the Act requires the Board to determine how many employers "were represented by the [applicant] on the date of the making of the application" and in that context "represent" must mean represent for the purpose of making the application for accreditation, not just representing them in collective bargaining.

21. The OPDC accepted the applicant's assertion that 11 of the 13 employers in the bargaining unit were members of the applicant when this application was made. The OPDC concedes

that if membership in the applicant were sufficient to establish the requisite authority to bring this application then the applicant represented more than enough employers on the application date to obtain accreditation.

22. The Board by decision dated December 11, 2007 referred this application to the Registrar to fix a "terminal date" or date by which an employer affected by the application must file its response or statement of information in respect of this application. Rule 23.5 of the Board's Rules of Procedure provides:

> The Registrar may set an employer response date in any application and may change that employer response date if he or she considers it advisable.

The Board in its decision dated December 21, 2007 noted the Registrar had fixed the employer response date as February 8, 2008. Rules 23.2 and 23.3 provide:

> 23.2 The applicant for accreditation must also file by the response date:
>
> (a) proof that it is authorized by each employer whom it represents to act as a bargaining agent;
>
> (b) an alphabetical list of employers corresponding with the evidence of representation filed; and
>
> (c) an alphabetical list of employers claimed to be in the unit of employers.
>
> 23.3 The applicant for accreditation must also file, not later than the second day after the response date, a declaration concerning representation documents in the form set by the Board.

All of the documents required by Rule 23.2 and the declaration required by Rule 23.3 were filed by the applicant on February 8, 2008. Therefore, the employer authorization documents relied on by the applicant, including those the OPDC accepted were sufficient, were filed within the time prescribed by the Board's Rules.

23. We do not accept the OPDC's assertion that the applicant had to have obtained specific authorization to make this application from employers on or before the date it filed this application to establish that it represented those employers on the date the application was made. In any event, all but two of the authorization documents filed by the applicant were dated before the application was filed. The only two authorization documents the applicant filed that were dated after the application date were the documents in the form set out in paragraph 18(d) above.

24. The applicant pointed out it had filed the requisite authorization documents in accordance with the Board's Rules but submitted, in any event, section 136(4) of the Act permits the Board to postpone consideration of the application to allow the employers the applicant claims to represent "to vest additional or other authority in the organization that the Board considers necessary." Given that the authorization documents were filed in accordance with the Board's Rules and in light of our view of the effect of the documents and other material the applicant filed, it is unnecessary to deal with the OPDC's argument concerning whether the Board ought to accept authorization documents filed

beyond the time established by the Board's Rules and whether the Board should exercise its discretion under section 136(4) to postpone consideration of the application in order to receive further evidence relating to the applicant's authority to act as the accredited bargaining agent for the employers in the bargaining unit.

25. Section 136(1)(b) requires the Board to ascertain the number of employers "represented by the employers' organization on the date of the making of the application". The Act does not define what "represented by the employers' organization" means. Nevertheless, its meaning can be gleaned from the definition of "employers' organization" in both sections 1(1) and 126(1) of the Act. The definition of employers' organization" in section 1(1) provides:

> "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers' organization and a designated or accredited employer bargaining agency;

The critical element of the definition is that one of its purposes must be "the regulation of relations between employers and employees". The definition of "employers' organization" in section 126(1) states:

> "employers' organization" means an organization that is formed for the purpose of representing or represents employers as defined in this section;

Reading those two definitions together, it is apparent an employers' organization within the meaning of section 126(1) of the Act is an organization of employers in the construction industry formed for purposes that include representing those construction industry employers in "the regulation of relations between employers and employees". We are satisfied that an employers' organization "represents" an employer for purposes of the Act in relation to an accreditation application when that employer authorizes or appoints that organization to act on its behalf in relation to the regulation of relations between employers and employees or, in other words, in collective bargaining.

26. The Board in *Electrical Power Systems Construction Association*, Board File No. 0515-07-R, decision dated November 13, 2007, unreported, Q.L. cite [2007] OLRD No. 4747 wrote at paragraph 15:

> Section 136(1)(b) requires the Board to determine the number of those employers that were "represented" by the applicant on the date of the making of the application. In my view, an applicant for accreditation represents an employer where that employer is a member of the applicant and the applicant's objects as set out in its by-laws or constitution include the representation of members in labour relations matters including, but not limited to, collective bargaining negotiations and entering into collective agreements. The Board has also found that an applicant for accreditation "represents" an employer when it is authorized by an employer to bring the application for accreditation and act as that employer's bargaining agent. (See Rule 23.2(a) of the Board's Rules of Procedure.)

The proposition that an employers' association "represents" its members for purposes of an application for accreditation where the objects of the employers' association include the

representation of members in collective bargaining is not novel. The Board in *The General Contractors' Section of the Toronto Construction Association*, [1971] OLRB Rep. Nov. 719 dealt with an accreditation application filed by The General Contractors' Section of the Toronto Construction Association (the "TCA"). In support of its application the TCA filed, in addition to employer authorizations for some employers, a list of its members in good standing as of the application date. The Board held that membership in the TCA was sufficient to establish that the TCA represented those employer members for purposes of the application when it wrote at page 720:

> An examination of the evidence of representation submitted by the applicant, together with the By-Law Number 1 New Series filed with the application, indicates that for members of the Association there has been sufficient vesting of authority in the applicant employers' organization to enable it to discharge the responsibilities of an accredited employers' organization....

27. The applicant's Constitution at paragraph 3 states, in part:

> The general purpose and objects of the ASSOCIATION are applicable only in relation to The Electrical Power Systems Sector which includes, but is not limited to, all construction work under the responsibility of Ontario Power Generation Inc., Bruce Power LP and Hydro One performed in the Province of Ontario on their property for the bulk power system, save and except the building of commercial type office facilities at urban locations remote from operating facilities, and shall be as follows:
>
> ...
>
> (b) to represent Members in labour relations matters and without restricting the generality of the foregoing, including certification, accreditation, collective bargaining, negotiation, conciliation, mediation, arbitration, jurisdictional disputes, Labour Relations Board matters and collective agreement administration;
>
> ...
>
> (d) to negotiate from time to time and to enter into on behalf of the Members collective agreements covering the Members' eligible employees with such bargaining agency or agencies as is required or may be permissible under applicable legislation.

An employer, on becoming a member of the applicant, is bound by the applicant's constitution and by-laws by virtue of its membership. Thus, it is apparent every employer who was a member of the applicant at the time the application was made was, for purposes of section 136(1)(b) of the Act, represented by the applicant. Eleven of the thirteen employers in the bargaining unit were members of the applicant at the time the application was made. Moreover, the authorizations filed by the applicant, discounting for purposes of this issue the authorizations signed after the application was filed, reinforce the fact that the applicant represented, as of the application date, not less than nine of the employers in the bargaining unit.

28. While the authorizations dated before the application was filed could certainly have been more explicit, they are, in our view, sufficient for purposes of demonstrating "representation" within

the meaning of section 136(1)(b) since they all clearly authorize the applicant to represent them in collective bargaining and in concluding a collective agreement with the OPDC.

29. Furthermore, we are satisfied the fact that eleven of the thirteen employers in the bargaining unit were members of the applicant together with the twelve employer authorizations filed by the applicant in accordance with Rule 23.2, including the two authorizations obtained after the application date, establishes that at the very least, eleven of the thirteen employers in the bargaining unit were both represented by the applicant and had vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

30. The Board in its decision dated December 21, 2007 directed the applicant to provide notice to the employers listed by the OPDC. (The OPDC had not filed Schedules E and F with its response, but subsequently, by letter dated September 17, 2007 filed in accordance with the Board's direction dated August 3, 2007, provided a list of employers it suggested appear to come within the bargaining unit proposed by the applicant.) That December 21st decision also directed the applicant to provide notice to any other employer the applicant believed may be affected by this application. The Board in its December 11, 2007 decision directed the applicant to cause notice of this application to be published in the following newspapers:

The Toronto Star
London Free Press
Ottawa-Citizen
Daily Commercial News
Chronicle-Journal (Thunder Bay)

The applicant filed invoices in respect of the publication of the notice in those five newspapers. In addition, notice of the application was posted on the Board's website. We are therefore satisfied that adequate notice of this application was provided to any employer that might be affected by this application.

31. Twelve employers filed an Employer Filing, Application for Accreditation, Construction Industry (Form A-94). All twelve of those employers were employers the applicant agreed were in the bargaining unit and were also on the list of employers filed by the OPDC. Those twelve employers had also indicated in the Form A-94 they had filed that they had employed employees affected by this application within one year prior to the date on which this application was filed. Therefore, those twelve employers will be listed on the Schedule E.

32. It appears from the material filed by the parties that the applicant and responding party, at their meeting with a Labour Relations Officer following the Board's decision dated September 29, 2008 agreed there were thirteen employers in the bargaining unit on the date the application was filed. (The applicant advised the OPDC by letter dated October 30, 2008, a copy of which was filed with the Board, that it had identified 13 employers for which the OPDC held bargaining rights. There is nothing in the Board's file from the OPDC asserting anything to the contrary.) In the absence of any information with respect to the one employer that did not file a Form A-94 (Canform Structures Limited), the Board is prepared to conclude it did not have employees affected by this application within one year prior to the application date. Neither the applicant nor the OPDC advised the Board subsequent to the October 30th letter from the applicant that there were any other employers in the bargaining unit on the date this application was filed. Canform Structures Limited will therefore be

the only employer to be listed on Schedule F, that is, an employer in the bargaining unit that did not employ any employees affected by this application within one year prior to the date this application was made.

33. The Final Schedule E and Final Schedule F are as follows:

Final Schedule E

Babcock & Wilcox Ltd.
Black & McDonald Limited
Comstock Canada Ltd.
Crossby-Dewar Projects Inc.
Curran Contractors Ltd.
F.D. Light & Power Ltd. o/a Dundas Drilling
Hayman Construction Inc.
Hydro One Inc.
Siemens Canada Limited (Power Generation Services Division)
Ontario Power Generation Inc.
Bruce Power LP
Eastern Construction Co. Ltd.

Final Schedule F

Canform Structures Limited

34. Schedule E is comprised of the employers in the bargaining unit that employed employees for whom the OPDC held bargaining rights in the area and sector that is affected by this application within one year of the application date. Therefore, the Board finds there were twelve employers for the purposes of section 136(1)(a) of the Act.

35. Based on the material filed, the Board is satisfied that all twelve employers listed on Schedule E were represented by the applicant within the meaning of section 136(1)(b) on the date this application was made, May 4, 2007. The applicant filed proof that those twelve employers had signed employer authorizations establishing the applicant's entitlement to represent them in collective bargaining and to enter into collective agreements on their behalf.

36. Under section 136(1)(c), the Board must also ascertain the number of employees who were working during the weekly payroll period immediately preceding the date of the application for the employers the Board has determined are in the bargaining unit, or if the Board is of the view that such payroll period is unsatisfactory, during some other weekly payroll period the Board determines is satisfactory. Neither the parties nor any employer affected by this application sought to have the Board use a different payroll period.

37. Of the thirteen employers in the bargaining unit, twelve filed a Form A-94 and a schedule H listing the employees who were at work in the bargaining unit during the week prior to the application date. It appears from the Employer Filing that just over four hundred employees were at work during that week, all of whom were working on behalf of employers represented by the applicant.

38. Therefore, we are satisfied, based on the material filed, that a majority of the employers in the unit of employers is represented by the applicant and that the majority of the employees who were on the payroll of the employers in the bargaining unit during the week prior to the application were employed by employers represented by the applicant.

39. The Board therefore finds the applicant has met the conditions established by section 136(2) of the Act for accreditation.

40. None of the employers that had notice of this proceeding indicated any opposition to the application. On the day of the hearing, no employer attended at the Board seeking to participate. No objection to the application was received by the Board.

41. In the result, a certificate of accreditation shall issue to the applicant.

1026-07-ES Highline Produce Limited, Wellington Mushroom Farm, Applicant v. Tammy Flieler and Director of Employment Standards, Responding Parties v. Ontario Federation of Agriculture, Intervenor

Employment Standards – The employment standards officer found the employer in violation of the Act by failing to pay holiday pay to the claimant employee who packed and wrapped fresh mushrooms on a mushroom farm – The narrow issue before the Board was whether the employee's work was directly related to the primary production of mushrooms, that is, did the exemption in s. 2(2) of Regulation 285 apply – The Board found that work directly related to primary production means "hands on" work which occurs on the farm or place of growing, that deals with the product in its original/raw state – The Board was also unable to rationally reconcile the Director's position that work involved in storing and transporting mushrooms which occurs on the farm but after packing, was work that is directly related to primary production, but the work of packing was not – The Board found the exemption applied and the employer was not required to pay holiday pay – Appeal allowed

BEFORE: *Kevin Whitaker*, Chair.

APPEARANCES: *Elvey Marshall* for the applicant; no one for the respondent employee Tammy Flieler; *Grainne McGrath* and *Judy Chan* for the Director of Employment Standards; *John Craig, Jodi Gallagher* and *Ken Forth* for the intervenor.

DECISION OF THE BOARD; July 30, 2009

I

What This Case is About

1. This is an application for review filed pursuant to section 116 of the *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended (the "Act") against Order to Pay No. 23354 issued by an Employment Standards Officer on May 24, 2007.

2. The Employment Standards Officer found that the applicant employer was in violation of Part X, section 26 of the Act by failing to pay public holiday pay to the respondent employee.

3. The employer argues that it is exempt from the obligation to pay public holiday pay to the claimant employee, pursuant to the provisions of sections 2(2) and 9(1)(d)(i) of Regulation 285. More particularly, the applicant suggests that the work in question – packing (including wrapping) of fresh mushrooms on a mushroom farm - is directly related to the production of mushrooms, and for this reason triggers the exemptions under the Regulation.

4. The respondent Director of Employment Standards takes the position that the work in question is not directly related to the production of mushrooms, in which case the exemptions do not apply.

5. The Ontario Federation of Agriculture (the "OFA") has intervened in support of the employer. The OFA suggests that the outcome in this case may have broad and significant consequences for Ontario vegetable and fruit producers generally.

6. A hearing was held on June 18 and 19, 2009. The employee was given notice of the proceedings and did not appear.

7. For reasons which follow, the Board finds that the employee claimant performed work directly related to the primary production of mushrooms and that the exemption in section 2(2) applies. It is not necessary to decide whether the exemption in section 9(1)(d) of the Regulation applies.

8. The application is allowed.

II

The Facts

9. Two witnesses testified at the hearing. The employer called as a witness Mr. John Krystalyn who has worked for the employer for 32 years and was at the time of the Order, the Farm Manager. The OFA called as a witness, Mr. Ken Forth who is a farmer, a member of the OFA Board of Directors since 1995 and has served as the Chair of the OFA Labour Issues Coordinating Committee. No evidence was led by the Director and, as noted earlier, the employee did not participate in the hearing.

10. The evidence given by Messrs. Krystalyn and Forth was not seriously challenged on cross-examination. I find both men to be credible and reliable witnesses.

11. Evidence before the Board establishes the following:

(i) Mushrooms are highly perishable, easily damaged and continue to grow after being harvested;

(ii) The production of mushrooms requires in this order: the preparation of soil, seeding, tending, harvesting, packing, cooling and then transport to market;

(iii) Mushrooms are packed on the farm (including being wrapped with cellophane) prior to storage and transport;

(iv) Packing slows the growth of mushrooms, enables storage and transport and ensures that mushrooms remain safe for consumption;

(v) Packing is not a "stand alone" step in the production process but is integrated with harvesting;

(vi) At the time of the Order, the employee claimant was engaged in packing mushrooms after harvesting, prior to storage and then transport;

(vii) Employees typically do not perform only one discrete task but may be assigned to work in any of the steps in the production process;

(viii) The production process for mushrooms has not changed in the last three decades;

(ix) At the time of the Order, it was understood in the farming industry and by the Employment Standards Branch that packing was part of "primary production". This understanding was reflected in the Employment Standards Act Manual (the "Manual");

(x) It has been and remains the case that the storage and transport of mushrooms which follow packing is understood by the farming industry and the Employment Standards Branch to be directly related to primary production. In other words, an employee who works storing mushrooms that have been packed by the claimant employee and the driver of a truck that is used to transport mushrooms from the farm to market or clients after storage and/or packing, is considered to be performing work that is "directly related" to "primary production";

(xi) The Manual was changed in November 2008 to reflect the Director's "new" view that from that point forward, packing mushrooms (but not storage or transport) was not part of primary production.

III

Analysis

12. The narrow issue to be determined is whether sections 2(2) or 9(1)(d) of Regulation 285 apply to the work performed by the complainant employee – that being the packing and wrapping of mushrooms in cellophane on the farm, following harvest before storage and transport.

13. The relevant portions of Regulation 285 are as follows:

> **2.** (2) Subject to sections 24, 25, 26 and 27 of this Regulation, Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.
>
> ...
>
> **9.** (1) Part X of the Act does not apply to,
>
> ...
>
> (d) a person whose employment is directly related to,
>
> (i) mushroom growing,
>
> (ii) the growing of flowers for the retail and wholesale trade,
>
> (iii) the growing, transporting and laying of sod,
>
> (iv) the growing of trees and shrubs for the retail and wholesale trade,
>
> (v) the breeding and boarding of horses on a farm, or
>
> (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes.

14. The parties agree that mushrooms are "vegetables" for purposes of section 2(2) of the Regulation and the work in question occurred on a farm.

15. The question posed by section 2(2) of the Regulation is whether the employee's employment is work "directly related to the primary production of mushrooms"? If the answer to this question is "yes", then the employer is exempt from the obligation to pay holiday pay under section 26 of the Act.

16. Similarly, the question posed under section 9(1)(d) of the Regulation is whether the employee's employment is "directly related to mushroom growing"? If this section does apply, the employer is exempt from the obligation to pay public holiday pay under section 26 of the Act.

17. The parties agree that the Act and Regulations should be read in an expansive way, reflecting the remedial nature of the legislation and the principle that employer exemptions should be narrowly construed. Such expansive interpretation however must be consistent with plain language meanings and the statutory scheme.

18. In this context, the particular issue is whether the packing of mushrooms is directly related to primary production. More precisely, what is meant by the terms "directly related" and "primary production"?

19. The employer and the intervenor rely on three authorities to assist in the interpretation of these terms, two being decisions of Referees (and the Divisional Court) under the Act and one being a decision of the Alberta Labour Relations Board.

20. In *Re Butt,* 1973 Carswell Ont 251, E.S.C. 118, the Referee appointed under the Act was asked to determine whether persons who packed gladiola seeds were working at a task that was directly related to the primary production of the seeds. The Referee found that these persons were in fact working with corms which were not seeds and the matter was determined on that basis. The Referee went on however to observe that if the product being packed had been seeds rather than corms, the work of packing would be directly related to primary production.

21. In *McCandless Poultry Farms Limited*, (1976) 76 CLLC ¶14,051 at 303, the Divisional Court endorsed the decision of the Referee appointed under the Act who concluded that the grading of eggs was part of primary production as it did not require any processing.

22. In *Leaver Mushrooms Co. Limited*, [1991] Alta. L.R.B.R. 20, the Alberta Labour Relations Board found that packaging mushrooms was directly related to primary production.

23. While these authorities are brief on analysis, it is possible to discern the application of some consistent principles. Work that is "directly related" must be work at the physical location where growing occurs and involves immediate "hands on" contact with the agricultural product. "Primary production" appears to refer to any step in the production or growing process prior to a change in the form or state of the product. In other words, the processing of a raw vegetable into some other state, such as a liquid or cooked solid would not be part of "primary production" nor would the handling of product in the changed state or form.

24. In summary, it seems that work directly related to primary production means "hands on" work which occurs on the farm or place of growing, that deals with the product in its original/raw state.

25. The application of these broad principles would lead to the conclusion that packing mushrooms in their raw state at the farm where they are grown, is directly related to primary production. Indeed, this is the direct finding of the Alberta Labour Relations Board with respect to mushrooms and by analogy, the analysis used with respect to eggs and seeds by the two Referees appointed under the Act in *Re Butt* and *McCandless*.

26. This result would also appear to be consistent with the position taken historically by the Director prior to the revision of the Manual in 2008 to reflect the "new" view of the application of the exemptions in the Regulation.

27. According to Messrs. Krystalyn and Forth, this is also consistent with the general understanding in the mushroom industry and more broadly, the understanding with respect to other fruits and vegetables within the farming sector in Ontario.

28. It is also difficult to reconcile the position taken by the Director that work involved in storing and transporting mushrooms which occurs on the farm but after packing, is work that is directly related to primary production – while the work of packing is not. There would seem to be no rational or logical basis for distinguishing between the act of packing fresh mushrooms on a farm and the act of driving away from the farm pulling a trailer filled with packed mushrooms. If anything, the act of driving the truck might be understood to be more remote from, and less directly related to primary production. Indeed, given the Director's position that the latter work (transport) is in fact primary production, it would appear inconsistent with the statutory scheme to conclude that packing was not directly related to primary production. No explanation was offered which would permit these apparent contradictions to be resolved. It is difficult to imagine an expansive reading of employee entitlement that would render such an outcome coherent.

29. For these reasons, the Board concludes that the work performed by the employee in this case is directly related to the primary production of mushrooms. As a result, the exemption in section 2(2) of Regulation 285 applies and the employer is not required to pay the employee public holiday pay under section 26 of Part X of the Act.

30. It is not necessary to determine whether the exemption in section 9(1)(d) of the Regulation applies.

IV

Disposition

31. The employer's application for review is allowed. The funds held by the Director, including the administration fee, are to be returned to the employer.

0111-09-HS; 0112-09-HS; 0657-08-HS; 0935-08-HS Lennox Drum Limited, Applicant v. Joey Ouimet and Ronald Landry, Inspector, Responding Parties; Lennox Drum Limited, Applicant v. Joey Ouimet and Ronald Landry, Inspector, Responding Parties; Lennox Drum Limited, Applicant v. Joey Ouimet and Joseph Ah-Hone, Inspector, Responding Parties; Lennox Drum Limited, Applicant v. Joey Ouimet and Joseph Ah-Hone, Inspector, Responding Parties

Health and Safety – The employer appealed an order requiring it to comply with the Industrial Regulation relating to proper stacking of drums – Lennox argued that its method of staggering two tiers of empty drums was safer than the prescribed insertion of two parallel planks between tiers, and that it met the equivalency criteria set out in s. 2 of the Regulation – The Board found that the Lennox method did not comply with the Regulation: to simply ignore the provision was not a variance – The Board was not satisfied that the health and safety of the workers was ensured with the staggering method – Appeal dismissed

BEFORE: *Marilyn Silverman*, Vice-Chair.

APPEARANCES: *Ryan Conlin, Jerry Lennox, Mary Lennox, Ralph Balbara* and *Sam Wahabi* appearing for the applicant; *Brian Fukuzawa, Joseph Ah-Hone, Robert Molina* and *Evan Schiller* appearing for the responding parties.

DECISION OF THE BOARD: July 10, 2009

1. These are four related applications. Three are appeals filed under section 61 of the *Occupational Health and Safety Act,* R.S.O. 1990, c. O.1, as amended (the "Act"). Board File No. 0112-09-HS is a suspension request.

2. When this case began there were two orders under appeal. The first was about the proper chocking of drums (the section 47 case) and the second, the storage of drums stacked upright (the section 48 case).

3. After earlier days of hearing, the parties attended before me on May 20, 2009 to complete the hearing in these matters. They advised that they had reached agreement on certain aspects relating to these applications and that the Board need only determine the section 48 case in Board File No. 0657-08-HS.

4. Having regard to that agreement, Board File Nos. 0935-08-HS and 0111-09-HS (as it relates to section 47 of the Regulation 851/90) are adjourned *sine die* for a period not exceeding one year to enable the parties to finalize their agreement. Unless within that time any party requests that the Board proceed with the matter, it will be deemed terminated without any further notice to the parties. Further, the suspension request in Board File No. 0112-09-HS is now moot and that application is terminated.

5. The remaining matters arose as follows. On May 23, 2008 a Ministry of Labour Inspector attended at the workplace and found that empty 45 gallon metal drums stored on their ends in the shipping area did not have two parallel planks between them. He issued one of the orders now under appeal. Again on March 11, 2009, a Ministry of Labour inspector attended at the workplace and issued a similar order but with respect to drums piled on their ends in storage trailers located in the yard area. The two orders read as follows:

> Order No. 13 (F.V. No. May 23, 2008)
>
> > Pursuant to section 48 of the Regulations for Industrial Establishments 851/90: Barrels, drums or kegs that are piled on their ends shall have two parallel planks placed on top of each row before another row is added. The employer shall ensure that the empty 45 gallons metal drums stored by the Shipping area have two parallel planks placed on top of the bottom row before another row is added. This order shall be complied with by May 26, 2008.
>
> Order No. 6 (F.V. No. March 11, 2009)
>
> > Pursuant to the Regulations for Industrial Establishments 851 section 48 Lennox Drum shall ensure that barrels, drums or kegs that are piled on their ends shall have two parallel planks placed on top of each row before another row is added. This

> order is in reference to drums stored upright, piled on their ends, in storage trailers, located in the yard area of the premise. Specifically, though not limited to, a trailer located in the north east corner of the yard, plated Y67 925. These drums were noted as being piled on top of each other with no material in between.

6. The orders are essentially the same, the issue being the placement of the parallel planks between the two tiers of drums.

7. Section 48 (the "Regulation") is contained in Regulation 851/90 of the Act. That Regulation provides at section 48:

> Barrels, drums or kegs that are piled on their ends shall have two parallel planks placed on top of each row before another row is added.

8. The employer does not dispute that it does not use parallel planks when it piles drums on their ends. It asserts, however, that its method provides at least equal or greater protection to workers. It relies on an equivalency section found in section 2 of Ontario Regulation 851/90 issued under the Act:

> **2.** In applying this Regulation, the composition, design, size and arrangement of any material, object, device or thing may vary from the composition, design, size or arrangement prescribed in this Regulation where the factors of strength, health and safety are equal to or greater than the factors of strength, health and safety in the composition, design, size or arrangement prescribed.

9. The appellant employer ("Lennox Drum" or "the employer") is an industrial establishment in the business of recycling and distributing industrial containers. The containers or drums are refurbished, cleaned and sometimes painted at the employer's facility. The drums are stored at various locations on the employer's premise, until they are shipped to customers.

10. Jerry Lennox is the owner and president of Lennox Drum. He describes how the drums are processed at the facility. He has over thirty years of experience in this business. Drums are brought into the facility and processed for cleaning and painting. They are stacked on the shipping floor before being loaded onto trucks and sent to customers.

11. Lennox Drum stores the drums at issue in these appeals as follows. There is a 1st or bottom tier of empty drums on the ground or floor. The worker then places other empty drums on top of the first tier to create a 2nd tier. Each drum on the 2nd tier is placed by the worker onto the 1st tier by sliding the bottom of the drums on the 2nd tier along the top rim of the 1st tier of drums. The drums are not of consistent height. The 2nd tier of drums are placed so that four contact points between the 1st and 2nd tier of drums are created. I refer to this as "the Lennox Method".

12. Mr. Lennox says that when the employer was required to comply with the orders issued by the Inspector in May 2008, his employees were forced to take breaks at different times because the employer could not pile the drums on top of each other. He says he has had to lay off two shifts and export work because Lennox Drum could not then process enough containers. Mr. Lennox previously

stacked drums three high, but the Ministry of Labour ("MOL") does not allow that. He tried planks and they do not work and the workers do not use them. As for shelves, Mr. Lennox says that he has no space for the shelves to put the drums and there is nowhere in the plant where there are shelves for drums. Pallets do not work because of tipping. He further relies on the fact that there have been no injuries in the method used.

13. The employer submitted in evidence two engineering reports completed by Hite Engineering Corporation. One is dated July 11, 2008 and the other November 7, 2008. I refer to these both as "the Lennox Engineering Report". The Ministry of Labour submitted its engineering report dated September 18, 2008 ("the MOL report"). In addition to the reports, I heard evidence from Sam Wahabi, the engineer who did the testing for the Lennox Engineering Report. The parties are agreed, and their qualifications bear out, that all the engineers are qualified professional engineers.

14. Mr. Wahabi is a mechanical engineer who has been with Hite Engineering for four years. He tested the stability of the stacks of drums and found that when the drums were stacked on their ends, if the surfaces of the barrels were even, the planks would make the stack more stable. He found that if there was a variation in the height of the barrels, there would be areas where the barrels had no contact with the planks and a teeter-totter effect would occur. Most of the stacks were not even, as the size of the drums is different. Further when the barrels are loaded on top of the planks, the planks slide out of location and/or are knocked out of place. Mr. Wahabi concludes as a result of his field testing, there was no physical way of making the planks stay properly in position. In his opinion, wider, better spaced planks would be more stable.

15. The Lennox Engineering Report says that the Regulation does not take into consideration empty drums piled on their ends. The solution, according to the Lennox Engineering Report, is to place drums using the Lennox Method, referred to as staggered formation. The Lennox Method creates four contact points with the drums for the two tiers of drums. This increases the stability of the drums because the support points are further from the centre.

16. The Lennox Engineering Report concludes with the following:

> "It is our opinion that piling the drums on their ends in the staggered formation shown above is more stable relative to piling the drums with the planks between the two tiers."

17. In Mr. Wahabi's assessment, the insertion of the planks is more hazardous for the workers than the staggered formation. When the planks are added, the contact points are lessened as the drums are of different heights and there is no full contact between the two tiers of drums. The planks are easily pushed out of position. Too, he points out that the Lennox Drum drums are empty and the Regulation is intended to apply to full drums, which would cause more injury if they fell. Further, when the drums are empty, the planks will more likely move when a drum is manually placed on top of the plank as there is insufficient pressure from an empty drum to prevent movement.

18. The MOL provides two reports by its engineer Robert Molina. I refer to the one that reviewed the July 11, 2008 Lennox Engineering Report. In the MOL report, Mr. Molina says that the Lennox Engineering Report says that the staggered formation of two tier high drums is more stable without the use of planks.

19. Mr. Molina agrees that the closer supports are to the center of the drum, the more stable the second tier. But he says that the instability of the top drums depends upon the location of the placement of those drums. The MOL report concludes that " ... by using planks as required by the Regulations, the contact area ... is increased approximately 61 times as compared to the..." [Lennox Method].

20. As to the difficulty resulting from the variation in the height of the drum lips, the MOL report indicates that that difficulty is inherent, with or without the planks. The MOL report concludes that the Lennox Method does not provide an equal or greater factor of strength, health and safety as required in section 2 of the Regulations.

21. The Lennox Engineering Report concedes two points from the MOL report. These are:

> We agree with Mr. Molina that if planks were placed in an arrangement where the support locations and contact surfaces are optimum and the arrangement is maintained during the process of stacking, the stack would prove to be more stable.
>
> The above conditions are achievable in circumstances where bottom tier drums have some degree of consistency in drum height, and the weight of the drums are significant to exert the required pressure on the plank to ensure its resistance to lateral movement. The drums will also have to be placed and positioned with the use of some type of a lift assist device to place the drums directly on the planks without any possibilities of knocking the planks out of location.

22. Mr. Wahabi says that a lift assist device could allow compliance with the Legislation and avoid the problems he identifies.

Submissions of the Parties

23. The employer highlights the purpose of the Regulation. This Regulation is contained in the material handling section of the Regulations to the Act and its purpose is to protect workers from collapses, slips or falls of material. In this case, the prevention of falling of the cylindrical objects is what is sought. The employer concedes that on the face of the Regulation, if the drums are placed on their ends, parallel planks are required to be placed between them.

24. However, Lennox Drum asserts that the Industrial Regulations are broad in order to encompass a large number of operations. It says that where it may not be operationally feasible to comply, the employer must establish an alternative or variation that has the requisite strength. That is what the employer says it has been done in the staggered formation recommended in the Lennox Engineering Report.

25. The employer contends that the drums arranged in staggered formation provide equal or greater stability and strength than the parallel planks. It says that the Regulation does not specify the height or kind of planks and is not prescriptive in the sense of the Regulations in the fall arrest sections of the Act.

26. The employer relies on the load testing described in the Lennox Engineering Report and contends that the information in that report bears out that the staggered formation is a better method of stacking drums, at Lennox Drum, than the one prescribed. The legal standard need only be that it is equal.

27. The employer points out that the MOL report is based upon drawing and not the hands on testing that was done by Mr. Wahabi.

28. The MOL report indicates that, if there is consistency in the height of the drums that are to be stacked, they are more stable with the planks. Also if a lift assist device is used, therefore eliminating the worker placement, and if the drums are heavy enough, the plank method is preferable. Lennox Drum argues, though, that is not the case here. Rather, because the drums are empty and weigh less, the planks will always have a teeter-totter effect.

29. The employer acknowledges that the safest formation would be not to stack the drums, though stacking is not prohibited by the Regulation. Lennox Drum concludes the safest method, without planks, is the Lennox Method and that it is at least as good as what the Regulation requires, if not better.

30. There is no case on point. The employer refers to the decisions in *City of Hamilton* 2002 CanLII 16893 (Ont. C.A.) and *Tembec Forest Products (1990) Inc.* [1994] O.O.H.S.A.D. No 3. The first case outlines the purpose of the Act as broad and remedial legislation whose goal is the protection of the worker and as such should not be read in a narrow and technical manner. In this case the employer asserts that requiring the employer to use planks when its method is safer is technical adherence to the Regulation.

31. In *Tembec, supra,* the employer had chains affixed to a load of logs to prevent slippage; crowning. Although not in strict compliance with the legislation, the method was found to be an arrangement that worked and, as such, was allowed. That case was decided on the basis of the equivalency provision in Section 2 of the Act which allows for a variation from the strict application of a regulation if a proposed method is at least equal in factors of strength, health and safety.

32. The MOL responds that the employer is simply requesting permission not to comply with the Regulation. Lennox Drum is not proposing a variance, as contemplated in section 2 of the Regulations. The MOL posits that if Lennox Drum proposed using different boards, or a different number or boards, or a single sheet of plywood; a variance to the Regulation could be assessed by the MOL/Inspector. But here the employer is asking for an exemption.

33. The MOL emphasizes that a methodology problem should not be an excuse not to comply with a regulation. Lennox Drum is not suggesting alternates or equivalencies such as pallets, shelving, different or more boards; it is just saying it will not comply.

34. The MOL relies on its report that when planks were used, the contact area is 61 times greater than with the method Lennox Drum proposes.

35. The MOL asserts that the issues of the teeter-totter effect and the shifting planks goes to the size, length and weight of the planks used and that it is within the purview of the employer to comply with the Regulation and create a stable method for stacking the drums.

36. The MOL says that *City of Hamilton, supra,* should not be misconstrued so as to provide latitude to an employer not to comply with a regulation. The analysis and conclusions made by the Court of Appeal in the *City of Hamilton, supra,* are directed at protection of the safety of workers, not the entitlement of employers.

37. In response, Lennox Drum says the MOL's argument, differentiating between non-compliance and variance is technical and not in the spirit of the *City of Hamilton, supra,* case. The employer asserts that its method is safer for the worker and that is what should prevail. In this case, its conclusion is not using the planks is safer than using them and that is a valid equivalency argument. Too, it says that the MOL argument ignores the operational realities and the valid conclusions of the Lennox Engineering Report

Disposition

38. The Regulation stipulates a standard. The evidence establishes that the employer is in violation of the Regulation. The defence is that the employer's method of arranging the drums is safer than the prescribed method.

39. To simply ignore the Regulation is not a variance. The intent of the Regulation is to have two parallel planks between rows of drums. What is contemplated in a variance is a method that securely and safely ensures the stability of the drums. What is not contemplated is the arrangement which the Regulation is designed to combat. That is what the employer seeks to suggest is a variance.

40. The Employer contends that its method is overall safer than that provided for in the Regulation. The weakness in the employer's comparison is that its method to achieve the supposedly safer outcome depends upon particular dexterity by the worker concerned in the process of stacking the drums. As the MOL argues, that process is not equivalency.

41. Part of the employer's argument rests on the fact that its drums are empty and its assertion that the Regulation applies apply to full drums. There is no such distinction made in the Regulation and accordingly it does not provide a reason for non-compliance.

42. In any event, the MOL engineer does not concede that the employer's stacking of the drums directly upon the other drums creates more stability and therefore less of a hazard than is provided for in the Regulation. His conclusion that the contact area with the planks is 61 times greater than the Lennox Method is unrefuted. That engineering conclusion is also conclusive of this case.

43. Mr. Lennox's evidence is that he has no room for shelves and the type of planks he used did not work. The employer's obligation is to comply with the legislation, ensure that his workers comply and devise a system that does work, or an equivalency. The Act does not provide for any specific type or size or kind of plank. It does not preclude the use of a lifting device. Further, if Lennox Drum were to devise a system of shelving, placement on plywood or the use of more than two planks, or any combination, the MOL/Inspector could advise as to whether an equivalency was achieved. Lennox Drum can choose not to stack at all. But it cannot say that it will simply not comply with the Regulation and choose its own method. It must ensure the health and safety of the worker in a structure that conforms to the legislation. This employer has not satisfied me that it has done that.

44. The purpose of the Regulations are broad and remedial. They are in place to ensure the safety of workers. The structure and process itself must facilitate the health and safety of the worker. As such, non-compliance with the Regulation in this case does not meet that standard. The alternative method used is not equivalent in strength, health and safety. Lennox Drum is therefore, required to ensure that the Regulation is complied with.

45. For these reasons, the appeal of Order No. 13 in Board File No. 0657-08-HS and the appeal of Order No. 6 in Board File No. 0111-09-HS are dismissed.

2312-08-ES Kularaj Kulasingam, Applicant v. **Magna Powertrain Inc. o/a Toral Cast Integrated Technologies** and Director of Employment Standards, Responding Parties

Employment Standards – The employee sought review of an employment standards officer's refusal to award him termination and severance pay – The employer asserted the employee was discharged for wilful misconduct or neglect of duty – The Board found that the employee was absent from work for an extended period without properly communicating his reasons for the absence or keeping the employer apprised of his circumstances – The Board found there were three aspects of note to the situation: (1) the employee was angry with the company for allegations of poor performance; (2) following the employee's initial brief and justified absence, the employer did not know why he was off work; and (3) the employee acknowledged that the employer had the right to seek medical information about the extended absence – The Board found the employee was unable to explain away his lack of response to the employer's repeated inquiries – Application dismissed

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *Kularaj Kulasingam* and *Anneston R.T. Fernando* for the applicant; *Laura Karabulut, Stacey Kappans* and *Ramdat Singh* for the responding party employer; no one appearing for the Director of Employment Standards.

DECISION OF THE BOARD: August 28, 2009

1. This is an application for review by an employee of the decision of an Employment Standards Officer not to issue an Order to Pay in his favour.

2. I heard the parties' evidence and argument over two days. The parties each called one witness. However, it is clear that many of the facts are not in dispute.

3. The applicant claims termination pay, severance pay and vacation pay on those amounts. The corporate responding party ("Magna" or the "company") asserts that the applicant's employment was terminated for wilful misconduct or neglect of duty and therefore it is exempt from the requirement to pay the amounts claimed.

4. The applicant was an employee of Magna which produces auto parts. He was hired in June 2000.

5. In the late summer of 2006 a Magna supervisor expressed concern to the applicant about his pace of production. The applicant disputed the supervisor's claims and asserted that the supervisor was fabricating production records. There were quite bad feelings which were not resolved to the applicant's satisfaction through the company's internal dispute resolution process.

6. In early September 2006 the applicant went off work due to stress. He provided the company with doctor's notes to excuse him until September 11, 2006. He advised the company that he was on medication for depression and stress as a result of the conflicts with his supervisor at work and the way they were handled.

7. On September 12 and 13, 2006 the applicant did not attend at work and did not call in to say he would be absent. On September 18, 2006 the company gave the applicant a disciplinary letter regarding these absences and failure to call in. The company advised the applicant that the letter constituted a "verbal warning" in the company's progressive discipline program. The company wanted the applicant to sign the letter, but the applicant disagreed with it. He said he did not call in because he was taking "strong sleeping medication" and was still sick.

8. After leaving a meeting regarding the letter the applicant claims to have blacked out while walking down some stairs. He fell and suffered injuries as a result of the fall.

9. The Workplace Safety and Insurance Board ("WSIB") approved the applicant's claim for benefits for injuries sustained in the fall. It granted his benefits. On November 10, 2006 it wrote the applicant and advised him that they had consulted his doctor who indicated that he should have returned to work on October 18, 2006 to modified duties which the company offered on October 11, 2006. The WSIB noted that the applicant's psychological issues were due to pressure at home and were not work related.

10. The applicant did not return to work. The applicant claimed to be still sick.

11. On December 4, 2006 the Company wrote to the applicant again and offered modified duties. The company also asked the applicant to have his doctor fill out a form which identified his physical restrictions.

12. On March 26, 2007 the applicant sent the company medical information to justify his absence. He remained off work.

13. By May 2007 the applicant was still off work. Accordingly, on or about May 23, 2007 the company telephoned the applicant and wrote him a letter advising him of his responsibility to maintain regular contact with the company. The company directed the applicant to, by June 8, 2007, have his doctor fill out a questionnaire regarding his medical condition and his ability to return to work.

14. The applicant did not have his doctor complete the questionnaire. Instead, his doctor completed a note dated June 4, 2007 that said simply he was not fit to return to work. His explanation for his failure to have his doctor complete the form as requested by the company was that he was not well and it "did not strike my mind".

15. The doctor's note was sent by fax on June 7, 2007. The applicant also claims to have sent by fax a letter dated June 7, 2007 which stated:

> "Attention to Management. I, Kularaj Kulendkira writing this letter to inform you that any further medical information you could contact my family doctor Dr. Raj Kirubaharan and his contact number is: (omitted)."

16. The applicant did not explain why the name "Kularaj Kulendkira" appeared in the body of this letter, rather than his name (which was in the return address location at the top of the letter).

17. The company denies receiving this letter and I believe it. The applicant presented a fax confirmation sheet to prove that the letter was sent. However, that sheet shows only that one page was sent and the company did receive the doctor's note which was the one page.

18. On June 11, 2007 the company wrote the applicant to advise that the doctor's note was not sufficient. It re-sent the questionnaire enclosed with its May 23 letter and directed the applicant to have it completed and returned to the company by June 18, 2007. Magna advised the applicant that it considered his absence to be "unexcused" and therefore he was subject to discipline. The applicant did not respond to the company's letter.

19. On July 30, 2007 the company wrote to the applicant again. The letter stated:

> On May 23rd, 2007 and on June 11th, 2007, letters were sent to your attention requesting you to provide us with detailed medical documentation to support your ongoing absence. To date, we have not received any contact from you nor any objective medical information to substantiate your ongoing absence. You have repeatedly ignored our requests. As stated to you, failure to provide adequate documentation will leave us no choice but to consider your absence "unexcused" and subject to disciplinary action.
>
> Based on your current actions, we have no alternative than to initiate the progressive discipline process and notify you that this letter shall serve as a formal **written warning**. Continued failure by you to adhere to the policies and procedures at Integrated Technologies will result in further discipline up to and including termination of employment.
>
> Again Kularaj, it is your obligation as an employee to maintain regular contact with human resources while absent from work, and to provide medical evidence capable of supporting your ongoing absence from work. To date, you have failed to do this and your repeated failure to respond to our inquiries puts you in breach of the Company's attendance policies. As such, please be advised that immediate corrective actions are required. Please contact me immediately upon receipt of this letter. Additionally we will require that you provide the following information from your physician by no later than **Monday, August 6th, 2007:**
>
> 1. Confirmation that you are considered totally disabled and that you remain under your physician's care;
> 2. A complete Functional Abilities Form (attached) which describes your current abilities; and
> 3. Your current prognosis for return to work.

> Please be advised that should you fail to make immediate contact with Integrated Technologies, and to produce satisfactory medical evidence to support your ongoing absence from work to date, we will have no choice but to assume that you have abandoned and/or resigned from your employment with Integrated Technologies.
>
> We look forward to obtaining the information requested above.
>
> **Please note we are not responsible for any expenses that may be charged by medical authorities for providing this information.*
>
> We hope that this letter finds your health improving and we wish you a speedy recovery. If you require any additional information or clarity please do not hesitate to contact the undersigned.

20. The applicant responded to the company as follows:

> On July 30, 2007 (around 10:15 a.m.) I spoke with Ms. Juliet Vo over the phone for the third time requesting to add the names of my children in the insurance. I informed earlier also but no action was taken.
>
> Ms. Vo asked me to send medical information about me from my doctor. She said that if I do not send it I would be terminated from work. I have already sent doctor's note signed by the doctor on June 4, 2007. I also sent a letter asking her to contact the doctor if further information is required. In my June 7, 2007 letter I said not to contact me because of my illness and to obtain the information from my doctor.
>
> On July 30, 2007 within one and half hours after speaking to me I received a letter dated July 30, 2007 by courier stating that I was being given written warning. I repeat again that I have given all the information requested in the letter over the phone. But because of my illness you can obtain all information from my family doctor, Dr. Raj Kirubaharan at ("omitted"). Information from all doctors are with you.

Notably, in this letter the applicant directs the company not to contact him anymore. It is clear that the applicant believed he was being harassed. The applicant testified that he did not have his doctor complete the questionnaire provided by the company because it did not "strike his mind" to take the form – he was "not mentally steady".

21. By letter dated August 7, 2007 the company renewed its request for further medical information:

> Despite these clear expectations, you have still not provided the required medical evidence to support your absence from work. Instead, you provided us with a message by facsimile today, asking that we not contact you any further, and suggesting that we contact your doctor directly for more information.
>
> This is not acceptable. The employment relationship is between you and our Company. W have a right to contact you, and you have an obligation to

remain in contact with us, and to provide reasonable medical evidence to support your absence from work.

Moreover, we are not permitted to contact your doctor directly, and your doctor is not able to provide a third party with confidential medical information about you, without your permission.

To date, you have failed to meet these obligations, and your ongoing absence from work remains unauthorized in nature.

Given your repeated failure to comply with our requests, this letter will serve as a Disciplinary Suspension, for breach of our attendance policies and your obligations as an employee. This is the final step in our Progressive Dis..pline Policy.

Again Kularaj, it is your obligation as an employee to maintain regular contact with human resources while absent from work, and to provide medical evidence capable of supporting your ongoing absence from work. No further disciplinary warnings will be issued to you. In order to maintain your employment with this Company it is now imperative that you immediately comply with our previous requests.

Please contact me immedi8ately by telephone upon receipt of this letter. Additionally, we will require that you provide the aforementioned medical information from your physician by no later than **Friday, August 10th, 2007**;

Please be advised that should you fail to make immediate contact with Integrated Technologies, and to produce satisfactory medical evidence to support your ongoing absence from work to date, your employment will be terminated immediately for just cause.

We look forward to obtaining the information requested above.

**Please note we are not responsible for any expenses that may be charged by medical authorities for providing this information.*

22. The company did not view the August 4, 2007 letter sent by the applicant as giving it authority to speak to the applicant's physician directly. In any event, it is clear that the company viewed the letter as an act of deliberate disobedience.

23. The applicant testified that he understood that the company was not satisfied with his August 4, 2007 letter. Despite that understanding and the clear warning in the company's letter, the applicant's response was to re-send his letter dated August 4, 2007 without further explanation.

24. Accordingly, by letter dated August 13, 2007, the company terminated the applicant's employment.

25. Sadly the applicant had in his possession two doctors' reports detailing his condition. He did not provide those to the company until well after the termination of his employment. He testified that his permission for the company to speak to his doctor directly was sufficient.

Decision

26. It is worth highlighting the context of the events in this case. In my view there are three aspects to that context.

27. The first part of the context is that the applicant was and is angry at the company. In particular, he feels that he was unfairly treated by the company regarding the allegations that he was a slow producer. He was not happy with the way in which the company dealt with his complaints about this treatment. His bitterness over this issue was clearly evident before me. Perhaps the applicant has the right to be bitter, perhaps he does not. That is not before me. However, I am satisfied it significantly affected the way that he dealt with the company's requests for information.

28. A second contextual point is that the company did not know why the applicant was off work from about October 2006 on. Except for one fairly obscure reference in a letter from the WSIB, there was no information presented to the company which suggested the applicant was suffering from anything other than a physical disability which he should have recovered from. The company's witness testified that she, and the company, only became aware of the applicant's condition after he brought his complaint to the Employment Standards Branch. I accept that evidence. Had the applicant provided the medical information requested, the company would have been in a position to deal with the applicant in a different way if that was appropriate.

29. Third, the applicant acknowledges that the company had the right to seek medical information. While the applicant views the company's conduct as harassment, this is difficult to accept. The applicant was off work for unexplained reasons for a considerable length of time. It is not surprising that the company wanted justification for the absence. The company 's concern is justifiably enhanced given the fact that he was capable of contacting the company to inquire about health benefits and was capable of dealing with the company. He just believes that Magna should have dealt with his doctor directly.

30. The company's right to seek medical information and its right to require the applicant to maintain regular contact (which he was not doing) is set out in its employee handbook in part as follows:

> Our goal is to offer employees reasonable accommodation, and suitable work to the extent it is available within the facility, for the purposes of assisting the rehabilitation process and ultimately returning you to your regular job.
>
> The first step in the return to work process requires you to maintain regular contact with the Human Resources Department while absent from work due to illness or injury, and to provide detailed and reasonable medical information on a regular basis from your physician setting out the nature of your condition, the dates you have been treated, your expected date of return, and any physical limitations that you may have.

31. The applicant has no satisfactory explanation for his failure to comply with the company's requests for information. In particular, he has provided no medical evidence that he was medically incapable of taking a form to his doctor and having the doctor complete it. I do not accept his explanation for his failure to have a family member assist him. Moreover, I note that he was dealing with the company on unrelated issues and wrote the company letters.

32. I conclude that the applicant deliberately failed to comply with the company's legitimate requirements for medical information. In all likelihood, the applicant did this because he was angry at the company and felt they were harassing him. This occurred at a time when the applicant had been off work for months without real explanation. The company gave the applicant numerous opportunities to comply with its legitimate directives. It warned the applicant that his employment would be terminated if he did not comply after moving him through the steps of its progressive discipline policy. I am satisfied that the applicant's conduct constituted wilful misconduct and exempted the company from providing him with termination/severance pay.

33. For all of the foregoing reasons, the application is dismissed.

1131-07-R; 1213-07-R; 1250-07-U; 3307-07-R; 3377-07-R Construction Workers Local 52 affiliated with the Christian Labour Association of Canada, Applicant v. **Michael Monteith Enterprises Limited and Monteith Building Group Ltd.**, Responding Parties v. The Labourers International Union of North America, Ontario Provincial District Council; Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Intervenors; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Michael Monteith Enterprises Limited and Monteith Building Group Ltd., Responding Parties v. Construction Workers Local 52 affiliated with the Christian Labour Association of Canada; Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Intervenors; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Michael Monteith Enterprises Limited/Monteith Building Group Ltd. and Construction Workers Local 52 affiliated with the Christian Labour Association of Canada, Responding Parties v. Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Intervenor; Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Applicant v. Monteith-McGrath Limited and Michael Monteith Enterprises Limited and Monteith Building Group Ltd., Responding Parties v. Construction Workers Local 52, affiliated with Christian Labour Association of Canada, Intervenor; Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. Monteith-McGrath Limited, Michael Monteith Enterprises Limited, and Monteith Building Group Ltd., Responding Parties v. Construction Workers Local 52, affiliated with Christian Labour Association of Canada, Intervenor

Construction Industry Certification – Employer Support – The union asked the Board to dismiss the application for certification submitted by another union on the basis that the employer violated s.15 of the Act by supporting organizing efforts – The Board considered whether the organizing employee was part of management and concluded that he was not in a managerial role but was in a position akin to that of a working foreman - The Board concluded that by assigning the organizing employee a role that allowed him access to a large number of employees covering a broad geographic area at a time when the competing union demonstrated an interest in organizing, it conveyed a message as to which union was preferred by the employer – The Board concluded that employees would not have been able to express their true

preference between the competing unions due to the employer's support of one union – Application dismissed.

BEFORE: *Marilyn Silverman*, Vice-Chair.

APPEARANCES: *Elizabeth Mitchell, Carlo DiBlasio* and *Elio Toppan* appearing for Labourers' International Union of North America, Ontario Provincial District Council; *David Defrancesco, Michael Monteith* and *Chris Tribble* appearing for Michael Monteith Enterprises Limited and Monteith Building Group Ltd.; *Elizabeth Forster, Maria Kotsopoulos, Stephen Bromell* and *Darrell Lumley* appearing for Construction Workers Local 52, affiliated with Christian Labour Association of Canada; *Stephen Chedas* and *Chris Crompton* appearing for Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America.

DECISION OF THE BOARD: August 31, 2009

1. Board File No. 1131-07-R is an application for certification brought pursuant to section 128.1 of the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, ch. 1, as amended (the "Act") by Construction Workers Local 52 affiliated with the Christian Labour Association of Canada ("CLAC"). Board File No. 1213-07-R is also an application for certification filed under section 128.1 of the Act by the Labourers International Union of North America Local 506 (the "Labourers") and Board File No. 1250-07-U is an application filed under section 96 of the Act by the Labourers alleging that the responding party, Michael Monteith Enterprises Limited and/or Monteith Building Group Ltd. (the "company" or the "employer") violated the Act in various ways and by providing "other support" to CLAC contrary to section 15 of the Act. Board File Nos. 3307-07-R and 3377-07-R are held in abeyance.

2. This decision deals only with the section 15 allegations. The issue is whether the CLAC application for certification must be dismissed because it was supported by the employer.

3. Section 15 provides:

> **15.** The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

4. The Labourers, CLAC and the responding party presented evidence and argument. The Carpenters also attended but did so as a watching brief further to my direction of February 22, 2008, as their interests were not affected by the section 15 case. Accordingly, my reference to "the parties" in this decision does not include the Carpenters.

5. The parties called a great deal of evidence; I heard sixteen witnesses over ten hearing days. After the company and CLAC called their witnesses, the Labourers wished to advance a non-suit motion but were not prepared to do so unless they could still call evidence in the event that the motion failed. The other parties opposed that procedure. I issued a decision on January 23, 2009 that required the Labourers be put to their election. They chose to proceed by calling evidence.

6. The management evidence was adduced by the site supervisors. In the main, they testified that they were unaware of and did not give any support to the CLAC organizing drive. The evidence of Chris Tribble, the senior project manager with responsibility for employee relations, Matt Gilman, the project manager at one of the relevant sites, Georgian College, Midland, and Michael Dunphy a supervisor at another site also assisted in the determination.

7. However, the determinative evidence in this case came from two sources: Darryl Lumley, the inside CLAC organizer and the objective evidence and records produced. At times Mr. Lumley's evidence was evasive and contradictory, and, there were internal inconsistencies in his evidence. What I refer to as the objective evidence was the uncontradicted evidence as to what Mr. Lumley did as part of his organizing campaign and what business records were produced.

The Material Facts

8. Monteith is a general contractor operating in the construction industry in Ontario. Much of the work described in this proceeding was done at schools, community centers and hospitals. At the time material to these applications, Monteith operated a large number of sites throughout the province.

9. In late 2004 early 2005, the Labourers commenced an organizing drive in order to represent the employees of Monteith. An application for certification was filed. Monteith filed a response. There were disputes between the parties. In settlement of those disputes, the parties agreed to hold a representation vote. The Labourers lost that vote and a one year bar to certification was imposed by decision of the Board (differently constituted), effective from June 28, 2006.

10. In anticipation of the end of the one year bar, the Labourers began an organizing drive in the spring of 2007. The Labourers' representatives began approaching employees. On May 7, 2007, a site supervisor, Michael Dunphy at the Holy Trinity school site in Bradford, had a verbal altercation with the Labourers representatives about their being on company property without authorization.

11. There is no dispute that the employer knew that the Labourers were renewing their drive. Mr. Tribble said he first learned of the Labourers organizing drive when he heard of some activity at a site in North Bay. Mr. Dunphy told Mr. Tribble about the Labourers visit to the Holy Trinity site. This new activity by the Labourers was no surprise to Mr. Tribble since the Labourers had said they would be back after the failed 2006 drive. As a consequence of this knowledge and information, Mr. Tribble contacted his site supervisors and reminded them and/or redistributed a "do's and don't's" list that had been prepared and distributed during the Labourers' first campaign, one year earlier.

12. The Labourers' representatives attempted to meet with employees off site and to contact them after work. There were some instances of run-ins as described with Mr. Dunphy and generally it was clear that the employer was not welcoming or encouraging of the Labourers campaign.

13. The company does not deny and Michael Monteith, the owner of the company, confirmed that the company preferred to operate without either trade union.

14. Darryl Lumley was the inside organizer for CLAC. He began working for Monteith in August 2005. Mr. Lumley was hired as a junior project co-ordinator to work in the company's Barrie

office. When Mr. Lumley worked in the Barrie office, he reported to Chris Tribble. Mr. Lumley also worked with Matt Gilman.

15. The Barrie office closed in the summer of 2006 and Mr. Lumley was assigned to do deficiency work and working foreman/labourers' work at various sites. Sometime prior to May 2007 he began working at a site in Midland called Georgian College. Matt Gilman was the project manager for that site and, as such, Mr. Lumley's boss. Mr. Gilman remained Mr. Lumley's boss during the organizing drives of both CLAC and the Labourers. Although now in the field, Mr. Lumley's salary remained the same although he was paid on an hourly basis. It was at this time, in the spring of 2007, that Mr. Lumley began his organizing efforts for CLAC.

16. Mr. Lumley says he works on the tools 90% of the time. He has a company cell phone and truck. On the Georgian College site in Midland, Mr. Lumley was listed as the contact person for the sub-trades. His name is listed on the Ministry of Labour notice of project, dated April 16, 2007, as the supervisor in charge of the project.

17. Mr. Lumley said he was responsible for tool lists. He has also attended site meetings with managers, trades, architects and engineers. The Labourers obtained Bell Mobility records which bore out that Mr. Lumley phoned suppliers and subcontractors with some regularity, even though he denied doing so before the Bell records were put to him. Mr. Lumley testified that he did not supervise the Georgian College site but rather checked regularly with Mr. Gilman who was the person in charge of that site. Mr. Gilman did not attend at the site on a regular basis.

18. Mr. Lumley does not hire, fire, discipline, grant time off or otherwise control or direct employees. However, both Mr. Lumley and Mr. Gilman agree that Mr. Lumley was the eyes and ears of Monteith at the Georgian College site.

19. In May 2007 Mr. Lumley was asked by Mr. Gilman to conduct a company wide tool audit. The stated purpose of that audit was to ensure that tools were kept track of on the many sites that Monteith operated. The company had conducted tool audits before.

20. The tool audit occurred between May 15 and June 19, 2007. The tool audit process saw Mr. Lumley attending at various Monteith sites to conduct an inventory of the company's tools. Mr. Lumley did not do the audits every day. He would still work at Georgian College or on a site he was auditing when directed to do so by the supervisor on that site. Mr. Lumley took the tool audit project as an opportunity to organize for CLAC.

21. Mr. Lumley conducted 14 visits to Monteith job sites in the two month period doing tool audits. During those attendances, he collected CLAC cards. Some sites were visited more than once. Mr. Lumley conceded that 14 visits to do tool audits in two months was something that he had never done before and he was not aware of that level of tool audit being conducted before by the company.

22. The dates when the CLAC cards were signed coincided with Mr. Lumley's attendance on sites to do tool audits. During the course of the proceeding the company was asked to provide the Labourers with a list of dates when the tool audits were performed and Mr. Tribble asked Mr. Lumley to compile that list. Mr. Lumley said he used the dates on the membership cards to determine the dates when he visited the sites to do the tool audits.

23. Mr. Tribble said that of necessity a tool audit must be a surprise on a site and that tool audits are performed by whomever is available. Mr. Tribble denied knowing about Mr. Lumley organizing for CLAC during the time when he was doing the tool audits. Mr. Tribble said that he was not aware of any CLAC organizing until after the CLAC certification application was filed. He denied ever knowing or authorizing any statements relaying a company preference for CLAC over the Labourers.

24. The management witnesses said they did not know anything of the CLAC organizing drive and Mr. Lumley said that he did not speak to any of them about it. Mr. Lumley testified that he did not tell any of the employees that the company wanted them to sign with CLAC or that the company had a preference for CLAC over the Labourers.

25. Mr. Lumley said that certain site supervisors knew that he was doing a tool audit although, some of the supervisors and employees from whom I heard evidence did not know that was his reason for being on the site.

26. I describe Mr. Lumley's organizing efforts. He attended at the work sites, often before lunch, sometimes speaking with the site supervisor and sometimes working on the tools with the men. He then usually took the men to lunch, spoke to them about CLAC, and gave them the opportunity to sign cards. The workers did not describe any pressure or intimidation during these sessions and overall they liked Mr. Lumley. The lunches were often longer than the usual allotted lunch time. None of the supervisors said anything about the extended lunch time when the men returned and none of the men were given warnings about returning late.

27. I think it is useful for this case to describe in detail two of Mr. Lumley's site visits. Mr. Lumley attended at the Holy Trinity school site in Bradford on May 15, 2007. He arrived before lunch, spoke to the site supervisor Michael Dunphy, and then took some men to lunch. He returned again on May 17 and June 12, 2007, he says, to continue and finish the tool audit. There were new employees on site whom Mr. Lumley spoke to about the CLAC organizing drive. Mr. Lumley said that another employee on the site told him the new guys were interested in signing cards, and that it was a coincidence that he returned to the site on the day they began work. On this site, Mr. Dunphy testified that Mr. Lumley did a substantial amount of labourers' work, as Mr. Dunphy assigned. Mr. Dunphy said that Mr. Lumley never did ultimately conduct a tool audit at the Holy Trinity site, although Mr. Lumley said that his return visits were for that purpose.

28. In June 2007, Mr. Lumley accompanied a project manager in his vehicle to a site in Wawa, two and a half hours north of Sault Ste. Marie to conduct a tool audit of this site. This was clearly a considerable distance away from the area where Mr. Lumley usually worked. Inclusive of driving, this trip consumed two days, June 6 and 7. Mr. Lumley had lunch with the men on the site and obtained CLAC cards. An employee from this site said that this was the first and only time the employees left the work site for lunch. Usually they bought lunch and returned to the site. Mr. Lumley was driven to and from the site by the project manager. The employee who gave evidence was aware that Mr. Lumley came up to the site with the Monteith project manager for the Wawa site. Mr. Lumley explained that the project manager was going up to Wawa and it made sense for Mr. Lumley to go with him to do the tool audit. Mr. Lumley did some work while waiting to drive back.

29. There was no documentary evidence as to any accountability or reporting to Mr. Gilman as a result of the tool audits. Employees did not describe any involvement in the tool audit process. Alexis Westgarth, an operations coordinator responsible for the paperwork associated with the tools audit system, said that managers, working foremen or "tool guys" do tool audits. Whoever does the audit fills out a form and Ms. Westgarth updates the information from that form to her computer. This ensures a computer record of what tools are on what sites. She said that although it was not unusual that Mr. Lumley would be doing a tool audit, she had the impression it was because he was not busy at a dedicated site. He had not done one before or after to her knowledge. Mr. Lumley admits that he never asked the employees about tools during the audit nor did he sticker or mark the tools. He did provide information to Ms. Westgarth.

30. The Labourers obtained Mr. Lumley's Bell Mobility phone records for cases in the months of April, May and June, 2007 were obtained by the Labourers. Those records indicate many calls to suppliers and customers which Mr. Lumley minimized or denied in his evidence before those records were put to him in cross examination. The Labourers elicited this evidence from checking the phone numbers on Mr. Lumley's Bell Mobility phone against the Bell reverse 411 feature. The company objected to this evidence in the absence of the Labourers' representative who did the reverse 411 check. The Labourers did not call that representative as a witness.

31. More significantly though, the Bell telephone records show calls by Mr. Lumley to the CLAC office directly followed by calls to the Monteith office. On April 25, 2007 a 15 minute call to the Monteith office was followed by a seven minute call to the CLAC office. Again on May 14, 2007 Mr. Lumley called the CLAC office, followed by a call to the Monteith office. On other occasions in the period, cases were made to both CLAC and Monteith. Mr. Lumley explains that he makes his calls in clusters when he has the chance and that he needed to be in touch with Mr. Gilman to get direction for the work he was doing.

32. CLAC filed its application for certification on June 28, 2007.

33. The Labourers filed their application for certification on July 5, 2007 and the unfair labour practice complaint on July 9, 2007.

The Submissions

34. The Labourers rely on five factors that they assert should lead the Board to conclude that the CLAC application enjoyed employer support: the person of Mr. Lumley; how the CLAC organizing began; how it was conducted; the difference in the employer treatment of the two unions and how the managers and supervisors conducted themselves in the face of the CLAC campaign.

35. The Labourers say that the employer acted immediately upon learning of the Labourers renewed drive in May 2007. The Labourers focus on the way the tool audits were conducted. The Labourers contend that the purpose of the tool audits was to give Mr. Lumley an excuse to have access to the sites so that he could organize for CLAC. The Labourers say that there was no legitimate business purpose to those visits. They say that Mr. Lumley was either managerial or so closely allied with management that the employees would have perceived his actions as being those of the employer. They argue that the employees would see Mr. Lumley and his activities as being an extension of their employer. The Labourers assert that the facts support the proposition that the employees would have objectively concluded that Monteith wanted them to sign with CLAC and not

with the Labourers. The Labourers contends that Mr. Lumley was working on behalf of his employer when organizing for CLAC. The Labourers assert that CLAC was not operating at arms length on this occasion.

36. The Company is critical of the Labourers' statement of particulars, largely those concerning wrongdoing by the supervisors, which were not borne out in the examination of the witnesses. The company is also critical of the fact that the Labourers obtained work for some of the men after they left Monteith and waived their union initiation fee.

37. The company's argument addresses three issues: a) was Mr. Lumley a supervisor and if not; b) did the company know of his organizing activity; and c) did the company put Mr. Lumley up to that activity?

38. The company disputes the Labourers' challenge to the authenticity of the tool audits. Tool audits are common for this company as they are for many companies operating in construction. They are not necessarily done in the same manner, even within one company.

39. In terms of the witnesses, the company says that their supervisors were not diminished in their evidence and the employee witnesses on the other hand were not credible. The company says that the Labourers have not met the onus of proof upon them in a section 15 case.

40. As regards employee wishes, the company says that their evidence bears out that employees acted, as they should, in their own interests and not because Mr. Lumley told them to join CLAC nor because they perceived Mr. Lumley as acting on behalf of their employer.

41. All the parties rely on similar Board case law dealing with section 15 of the Act being *Covertite Eastern Limited,* [1996] OLRB Rep. May/June 386;, *Coca-Cola Bottling Co.,* [2004] OLRB Rep. Jan./Feb. 23 (January 29, 2004); *Pre-Eng Contracting Ltd.,* [2008] OLRB Rep. March/April 284 (April 8, 2008), application for judicial review dismissed June 23, 2009.

42. *Coca-Cola Bottling Co.* was a case in which the Board was asked to determine a section 15 issue where two trade unions were vying for support in an industrial workplace. The Board held on those facts that there was no unlawful support where one of the unions was permitted to have its supporters circulate freely within the workplace for a short period of time. The Board based its decision on a number of factors. Monteith says that case is the same as here. There is no evidence that the employer was not operating on the basis of neutrality. Paragraph 27 of *Coca-Cola Bottling Co.* provides:

> 27. By s. 15 of the Act, the legislature aimed to prevent "sweetheart" unions from being certified. The ultimate test of whether s. 15 has been violated is whether the union concerned, because of the dependent nature of its relationship with the employer, is unqualified or unable to act independently on behalf of the affected employees in their relations with their employer. This was explained in *Edwards v. Edwards*, (1952), CLLC ¶17,027, on which the Board has relied:
>
> > The section is clearly aimed at "company-dominated" trade unions which are not entitled to be certified, on the theory that a trade union fostered by an employer cannot be considered as having been freely

> chosen by employees. The section designates conduct by means of which an employer might seek to confine the broad right confined by section 3 and is therefore to be called into play where that purpose appears. We consider it is intended to be applied where employer activities are of such a character or are of such proportions that it is reasonable to infer that employees have not exercised a free choice in the matter of the selection of a bargaining agent, or where an employer has given material assistance to a trade union in connection with its organizational or other activities; where, in other words, the particular applicant is not truly the chosen bargaining agent of the employees concerned. It is argued that because of its explicit language, section [15] need only be literally construed and mechanically applied. We suggest that it can properly be interpreted only by reference to what is its obvious intent: to prohibit the certification of any trade union which, because of the nature of its relationship with an employer, is not qualified to act on behalf of employees in their relations with their employer.

43. The employer concludes that in this case the Labourers section 15 allegations are based only on inferences.

44. CLAC's position is that Mr. Lumley was a working foreman. As a consequence of that, CLAC asserts that since the Labourers must establish a link between the Monteith management and CLAC. CLAC says there is no evidence to establish that link.

45. CLAC describes its view of Mr. Lumley's involvement in the tool audits. It says that the evidence bears out that the audits are an established practice. As to why Mr. Lumley was sent to Wawa, both CLAC and the employer explain that it was a large and remote site and an audit there would have been a signal to the other sites that they must take the tool audit seriously. The element of surprise is essential to the success of the tool audits and a tool audit at a remote site would have a significant impact.

46. Too, CLAC says there must be something beyond inference to connect the audits to employer involvement.

47. As regards the phone calls Mr. Lumley made to the Monteith office and to CLAC. CLAC asserts they are supportive of Mr. Lumley taking direction from Mr. Gilman and also that he made his calls in clusters when he had the opportunity during the work day.

48. CLAC says that there is no evidence that any of the managerial employees knew what was going on in Mr. Lumley's organizing efforts for CLAC and as a consequence the company could not be found to have been providing support. Once the Board concludes, as it must in CLAC's submission, that there was no connection between Monteith and CLAC, no employer support can be found.

49. On the case law, CLAC argues that *Covertite* and *Pre Eng* stand in direct contradiction with *Coca-Cola Bottling Co.* In *Coca-Cola Bottling Co.* the Board held that the union who receives employer support must be aware of and welcome that support. CLAC argues that even if the Board is returning to the *Covertite* approach which appears to have been adopted in *Pre Eng*, that section 15

support can be found where a union who receives the support is not aware of it, the Board should not find on the evidence in this case that the employees signed cards for any reason other than their self interest. There was no credible evidence from employees that Mr. Lumley pressured them or suggested that management wanted them to sign CLAC cards.

50. In the result, CLAC says that the Labourers have not satisfied the burden of proof upon them in this case and the section 15 case should be dismissed.

Decision

51. There are a number of aspects of this section 15 determination. First is whether Mr. Lumley was managerial or sufficiently allied in interest with management that his organizing for CLAC amounted to improper employer support. The second is, even if Mr. Lumley was not managerial, were his organizing efforts of such a character or nature that they must have been supported by the employer.

52. The Labourers say that Mr. Lumley was either a manager, or more probably that he was closely allied with management such that his organizing tainted the CLAC campaign. The other parties say that Mr. Lumley was a non-managerial employee who was simply encouraging other employees to support the union he preferred.

53. There are certain indications that Mr. Lumley was managerial, as the Labourers argue. He was on a contact list of names that were managerial or office employees and that no labourers were on. On the Georgian College site he spent substantial time calling suppliers and subcontractors; although he downplayed the frequency with which he did so. Until the spring of 2007, Mr. Lumley did not work on sites with the men with any regularity. He could not be classified as a labourer. Throughout that time he worked for Monteith in the office; closely with both Mr. Tribble and Mr. Gilman. As the person in charge of employee relations, Mr. Tribble is the person most closely involved in dealing with union organizing. Too, Mr. Lumley and Mr. Gilman admitted that Mr. Lumley was the eyes and ears of the company.

54. Some of this information is relevant to Mr. Lumley's organizing effort described below, but it is not sufficient, in my view, for me to conclude that, taken as a whole, it made him managerial.

55. As the employer and CLAC submit, Mr. Lumley is not managerial as contemplated in section 1(3)(b) of the Act. He had no right to hire, fire or discipline employees. He worked on the tools. His position was akin to that of a working foreman, a person who would, in the construction industry, fall within a bargaining unit.

56. Notwithstanding this conclusion regarding Mr. Lumley's status, he was perceived as being closely allied with management. Mr. Lumley worked in the office for a considerable amount of time for Monteith. He worked in the office with Mr. Tribble and Mr. Gilman and becomes the person chosen to conduct these audits which allow him access to all the Monteith sites. His connections and allegiances were with the managerial and office employees and much less so, if at all, with the potential bargaining unit employees. When Mr. Lumley worked on the sites, he attended meetings with supervisors and trades, his name was on the site as a contact person and he had a company phone and truck. He visited construction sites and had the freedom and access to take the employees to lunch. In Wawa he arrived with the project manager.

57. This kind of activity is suggestive of someone whom the employees would likely perceive as being in some association with their employer in a way different from their relationship with the employer. Mr. Lumley's organizing activity must have been viewed as conducted with the consent, if not approval, of management. This provides the background to Mr. Lumley's organizing efforts for CLAC.

58. There is no clear evidence of discussions or documents linking the employer or any of its representatives with Mr. Lumley's organizing efforts for CLAC. However, the objective evidence as to how, when and where the tool audits were conducted cannot bear any inference other than that it was a process which allowed Mr. Lumley to circulate unhindered amongst employees at various sites so as to organize for CLAC. That is the support that the employer gave to CLAC.

59. In this case, the inferences are clear. The timing and details as to how, where and in what manner Mr. Lumley organized persuade me that the tool audits were an opportunity to facilitate the CLAC organizing drive.

60. First, is the timing. Mr. Lumley started the tool audits when the company knew that the one year bar to certification was coming to an end and when it learned that the Labourers representatives were visiting the sites. Most of the employees Mr. Lumley approached to sign CLAC cards did not know him when he came on the site.

61. Second, is the circumstance accompanying the tool audits. Mr. Lumley attends in a company truck and takes the men to lunch. Some of the supervisors are aware that the men are off, others not and the workers get extra time for lunch, without consequence. The company is accommodating the purpose of Mr. Lumley's visits; and those visits from the employee perspective are to organize for CLAC. There is no reason to take employees out to lunch in connection with the tool audits and the discussion at the lunch is about CLAC, and not the tool audits. At the Holy Trinity site, Mr. Lumley's return visits coincide with new employees being on site.

62. The visit to Wawa is peculiar. This site was very far from where Mr. Lumley normally worked and consumed two days of his time. There is simply no convincing reason advanced as to why the project manager who normally visits the site for legitimate business reasons could not have himself conducted the tool audit. The employer suggests that Mr. Lumley attending as a surprise at a remote site would send a message to others that the tool audits are serious, however, that does not account for why the project manager could not arrive and conduct a tool audit. In addition, the evidence of the employee at the Wawa site was that there were no questions about tools or anything to do with a tool audit at that site. Too, the need for surprise also runs contrary to the idea of having one dedicated person doing the tool audit for the whole company at all the sites. Surely, if Mr. Lumley was conducting tool audits for two months his attendance at the sites would be known to be for that purpose. If the element of surprise was what the employer sought, then the tool audits should have been conducted sporadically by different people.

63. Third, is the history and results of the tool audit. Although tool audits were done previously, there was no evidence that there was a dedicated person assigned to them on a systematic or regular basis such as occurred here. This intensity then appears inconsistent with the fact that there was no subsequent written reporting method for the inventory of tools. The audit generated very little interest once it was finished either in terms of documentation, new or revised systems or follow up.

64. All of that combined with the other evidence, convinces me that the tool audit was not the main reason for Mr. Lumley's circulating at the sites.

65. In addition, there is Mr. Lumley's evidence about his cell phone records. Mr. Lumley said that he made few calls though when faced with the Bell records, he made many calls to suppliers.

66. What is of more concern and has nothing to do with the reverse 411 evidence, are the calls made to Monteith and those made immediately before or after calls to the CLAC office. CLAC asserts that Mr. Lumley's evidence that he made his calls in clusters should suffice. It does not. No satisfactory reason was offered for this sequence of calls and it only serves to reinforce the connection between the CLAC organizing drive and the employer.

67. Finally, there is no evidence to suggest that anyone from CLAC was aware of the employer support. CLAC and the employer rely in this regard on the decision in *Coca-Cola Bottling Co.* where the Board said that in order for section 15 to apply the union receiving the support must be aware of the support it receives and accept that support. There are good policy reasons for this so as to ensure that an employer does not defeat a genuine drive by providing unsolicited support. In that case the rival trade unions, as here, were competing for employee support. The employer allowed union supporters of one to wander unhindered in the plant for a number of hours.

68. However, the context of that case is decidedly different from this one. First, in the *Coca Cola,* case there had been a long rivalry in that plant between the two unions. Second, the Board noted that the employees were not new to union representatives and had a long history of being represented. Third, the neutrality of the employer in that case was clear. In the instant case, the tool audit plan could not have occurred without it being arranged or assisted on behalf of the employer. It was a plan that took place over several weeks and significantly coincided directly with the organizing drives of the two unions. These employees are unrepresented and faced with the prospect of choosing between two bargaining agents.

69. Mr. Lumley's task in the tool audits was to garner support for CLAC. Mr. Lumley was facilitated in his organizing. This was a message to employees as to which union to prefer. As the Board stated in paragraph 56 of *Covertite*:

> 56. The Board has made it clear in its jurisprudence that the purpose of section 15 is to preserve the arm's length relationship between unions and employers which is fundamental to the structure of the Act. A purposive, rather than literal, application of the section has found favour in the Board's jurisprudence, and is in our view the appropriate approach. Thus, not everything that an employer does that might be said to be supportive of an organizing campaign is sufficient to warrant the application of section 15. It is activity which is of a character or proportion such that it is reasonable to infer that employees have not exercised a free choice in the matter of the selection of a bargaining agent. See, for example, *Edwards v. Edwards*, (1952), 52 CLLC para. 17,027 and *Ontario Hydro*, [1989] OLRB Rep. Feb. 185 and *University of Toronto*, [1988] OLRB Rep. March 325. The purposive interpretation has meant that the provision of a list of employees to a union in an organizing drive by the employer contravened section 13 [now 15] in *Tri-Can*, [1981] OLRB Rep. Oct. 1509 but not in *Continuous Mining*, [1990] OLRB Rep. April 404, because in the former the trade union

applicant had been formed to thwart another union's organizing attempts, while the applicant in the latter had a long history of arm's length collective bargaining with the parent of the employer.

70. This part of the case is about whether the employees in the bargaining unit would have been able to exercise a free choice in the selection of their bargaining agent. The character of the support given to CLAC through the manner in which Mr. Lumley organized, and the position he held with this employer, convinces me that employees would not have been able to express their true wishes in that context. The support provided was sustained and material and of assistance to the CLAC organizing drive. It prevented the employees from exercising a choice free from employer interference.

71. Having regard to my conclusions, the CLAC application for certification Board File No. 1131-07-R is dismissed under section 15 of the Act.

72. There remain outstanding matters. The next determinations are in the Labourers' application for certification and section 96 complaint. It would appear that CLAC now has no further legal interest in these proceedings. CLAC shall have until **September 14, 2009** to advise the Board as to whether it agrees. If CLAC disagrees and asserts any further legal interest in the remaining matters, its assertion will be addressed by me either in a teleconference or by written decision.

73. Counsel for the Labourers and the company are directed to contact each other in order to attempt to reach agreement as to how the matters that remain should proceed. In the event they reach agreement as to the order of proceeding, they are to advise counsel for the Carpenters to see if that agreement impacts that union's interest in these cases. Counsel should then advise the Registrar as to how they intend to proceed, at which time the Registrar will schedule a hearing. In the event that there is no agreement by **September 24, 2009**, counsel is to advise the Registrar in writing and I will convene a teleconference call to determine how next to proceed.

74. I am seized of the remaining files.

0795-08-R; 1062-08-U International Brotherhood of Electrical Workers, Local 586, Applicant v. Reliance Construction of Canada Ltd. and **Reliance Construction (Ontario) Ltd.** o/a Reliance Construction Group, Responding Party; International Brotherhood of Electrical Workers, Local 586, Applicant v. Reliance Construction (Ontario) Ltd., Responding Party

Construction Industry Certification – Employer – The union applied for certification under s. 128.1, naming the general contractor as the employer of three electricians supplied by a sub-contractor – The union asserted that the general contractor was the employer based on an agreement signed by the general contractor acknowledging they would pay wages in order to guarantee that three electricians would continue to supply their services to meet a project deadline - The Board used the factors set out in *York Condominiums* to determine who employed the electricians on the application date – The Board found that the general contractor adopted the burden of remunerating the electricians, it was responsible for bringing the three

electricians back to work after they walked off the job, and it identified and controlled what work was to be performed – The general contractor was therefore held to be the employer on the date of the application – The general contractor operates its parent corporation out of Quebec and has subsidiary corporations that operate in Ontario and the United States – The Board found that it was appropriate to name the Ontario subsidiary as the employer but gave the union 60 days to request reconsideration if it thought that the description of the employer should be more inclusive – Application allowed

BEFORE: *Mark J. Lewis*, Vice-Chair, and Board Members *John Tomlinson* and *Richard Baxter*.

APPEARANCES: *Ron Lebi* and *James Barry* appearing for the applicant; *Michael S. Ruddy* and *Keith Oster* appearing for Reliance Construction (Ontario) Ltd.

DECISION OF THE BOARD: August 28, 2009

1. Board File No. 0795-08-R is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act") which the applicant elected to have dealt with under section 128.1 of the Act. Initially this application for certification was scheduled to be heard together with a section 96 application involving these parties, Board File No. 1062-08-U. However, on the penultimate day of hearings, the applicant advised that it was withdrawing that application. Accordingly, Board File No. 1062-08-U is withdrawn with leave of the Board and the remainder of this decision deals solely with the application for certification.

2. As set out in the Board's previous decision concerning this matter, dated September 12, 2008, two issues remained in dispute following the Regional Certification Meeting of July 9, 2008. One of these remaining issues concerns the correct name of the responding party and in particular relates to the relationship between the entities listed by the applicant as constituting the responding party for this application, being Reliance Construction of Canada Ltd. ("RCC"), Reliance Construction (Ontario) Ltd. ("RCO") and Reliance Construction Group ("RCG") (collectively hereinafter referred to as "Reliance"). The other issue concerns whether or not RCC, RCO and/or RCG was the *true employer* of any employees (essentially construction electricians) at work in the bargaining unit applied for on the date of application, June 6, 2008.

THE FACTS

3. For the purpose of this decision the relevant facts can be summarised as follows.

4. According to Reliance, RCC is a company incorporated pursuant to the laws of the Province of Quebec which carries on business as a general contractor in the construction industry in Quebec. Reliance asserts that RCC is the parent company of both RCO and RCG, which it claims carry on business in Ontario and the United States respectively.

5. Given the corporate structure it claims exists, Reliance asserts that the only responding party to this application which could be appropriate (assuming that it employed anyone in the bargaining unit) is RCO. The applicant disputes Reliance's positions and alleges that the business activities of the three named entities are not separate but are intermingled and all of them were involved with the particular project which forms the subject of this application for certification. It therefore claims that the responding party as named in the application is appropriate.

6. Both parties relied principally on the evidence, given in both chief and cross-examination, of Reliance's three witnesses in support of their differing positions concerning what the correct name of the responding party should be. Much of this evidence concerning Reliance's corporate structure and the various entities and names it has used for its activities in Ontario was confused, contradictory and appeared to be based (to a degree at least) on hearsay.

7. What ever the actual relationship between the three named entities may be, there is, however, no dispute that for sometime prior to the date of application RCO, at least, had been engaged, as the general contractor, in the construction of a twenty-two storey condominium building located at 90 George Street in Ottawa, Ontario (the "Project"). The electrical work on the Project was subcontracted. Initially, this work was performed by some form of joint venture involving an electrical contractor from Montreal that Reliance had worked with previously, ATG Electrique ("ATG"), and an Ottawa based electrical contractor, Briddlewood. However, in or about February or March 2008, Briddlewood ended its involvement on the Project and ATG carried on with the electrical work alone. Subsequent to the break-up of the joint venture, the applicant was certified to represent electricians employed by ATG in the ICI sector in the Province of Ontario and in all other sectors of the construction industry in Board Area No. 15 (which includes the City of Ottawa). Thereafter the applicant and ATG became bound to a collective agreement covering electrical construction work on the Project.

8. The electrical work on this project did not run smoothly. At some point in April 2008 ATG, not for the first time, failed to meet the weekly payroll for the members of the applicant it employed. This resulted in an arrangement involving Reliance, ATG and the applicant, which provided for advanced payments by Reliance to ATG and the issuing of joint payee cheques to ATG and the applicant, designed to insure that ATG always had sufficient funds to meet its payroll obligations to its workers and to make the monthly remittance payments required by its collective agreement with the applicant. Despite these arrangements, on Thursday June 5, 2008, at least one, and possibly more, of the ATG paycheques which had been issued to the workers that day *bounced* due to insufficient funds in the bank account on which they had been written.

9. The applicant quickly became aware of the actual and potential problems with the June 5th paycheques and, as a result, on June 6th its Business Manager, James Barry, and its Assistant Business Manager, Albert Olmstead, went to the Project shortly before the normal 7:00 a.m. start time to meet with the men. When Mr. Barry and Mr. Olmstead got to the Project that morning none of the applicant's members had started work. Instead they were all in the ATG *lunchroom* on the second floor of the building. At this time the applicant held a *closed door meeting* with its members. According to Mr. Barry, and as confirmed by Jean Prudhomme, an electrician who worked on the project (along with being the applicant's steward for this job) and who was in attendance at the meeting, on the morning of June 6th the electricians were all extremely upset that there had once again been problems with the paycheques and were all refusing to continue working on the Project.

10. After emerging from this meeting with his members, Mr. Barry was asked by Eric Allain, Reliance's Assistant Project Manager, to speak, by phone, with Steve Demauro, Reliance's Project Manager, who was in Montreal that morning. Messrs. Allain and Demauro had both been aware, as of the late afternoon or early evening of June 5th, that there was a problem with the ATG paycheques. On the morning of June 6th, after he was told by a site superintendent that the ATG electricians were not going to work that day, Mr. Demauro phoned Mr. Allain to find out what was happening at the project. During their first phone call that morning Mr. Allain advised Mr. Demauro about the

applicant's meeting which was going on at the time. Shortly thereafter, Mr. Demauro phoned Mr. Allain back and the two men were talking to each other when Mr. Barry emerged from the lunchroom. It was at this time that Mr. Allain asked Mr. Barry to speak to Mr. Demauro and handed his cellphone to Mr. Barry.

11. On June 6th Reliance was in the process of moving its site office from the second to the third floor of the building. This move had to be completed that day in order to allow future tenants of the building access to the area on the second floor where the office was. Some electrical work associated with the move remained to be done and therefore it was vital to Reliance that at least some electricians stayed on site to perform this work on June 6th. Mr. Barry and Mr. Demauro spoke about this after Mr. Barry emerged from his meeting with his members that morning. There was a dispute between these two men as to exactly what they agreed to in their phone call. However, there is no dispute that as a result of their conversation three electricians, including Mr. Prudhomme, remained onsite that morning and completed the electrical work associated with the relocation of Reliance's site office.

12. Messrs. Barry and Demauro both agree that in their phone call they discussed the fact that paycheques had bounced again and that the men did not want to continue working for ATG until this issue had been dealt with. They also both agree that the need for the office relocation work to be completed that day was discussed and that ultimately it was decided that three men, two journeymen electricians and an apprentice, would stay on site to do this work while the rest of the men would go home. Finally, they agree that their arrangements concerning what was to occur was supposed to be confirmed in writing, although they disagree as to exactly how and when this was suppose to be done.

13. With respect to the three men that were to remain on site, Mr. Demauro's recollection was that he had agreed, on behalf of Reliance, to guarantee that they would be paid for their work. Mr. Barry's recollection was that the agreement was that the men who stayed would be paid directly, for that day at least, by Reliance as, on June 6th, none of the men were prepared to work for ATG.

14. After this phone call, Mr. Barry decided, with Mr. Prudhomme's input, which men would stay. He then advised Mr. Allain that he and Mr. Demauro had agreed that three men would complete the office relocation work but that before they actually started working he wanted a written agreement signed by Mr. Allain stating that Reliance would be paying them. Mr. Allain phoned Mr. Demauro to confirm that he could do this and his evidence was that Mr. Demauro stated, words to the effect of: *yeh, give him* [Mr. Barry] *his paper saying what he needs.* Mr. Allain then wrote out an agreement which he and Mr. Barry both signed. This agreement reads:

> Friday June 6/08
>
> Reliane [sic] Construction Ottawa (Ltd) will be paying three electiciens [sic] for work performed Friday.
>
> - Jean Prudhomme
> - -Brian Biscope
> - -John Daley
>
> Time will be tracked
> ERIC ALLAIN ("E. Allain") JAMES BARRY IBEW LOCAL 586 ("James Barry")

15. The words *time will be tracked* were provided by Mr. Allain. The wording for the rest of the agreement was apparently dictated to Mr. Allain by Mr. Barry. After it was signed, Mr. Allain faxed the agreement to Reliance's Ottawa office and to Mr. Demauro in its Montreal office.

16. Later that morning, Mr Barry also had referral slips for each of the men who had stayed on site prepared. Mr. Barry stated that after they were drawn up he brought the slips to the Project where both he and Mr. Allain initialled each slip before he provided Mr. Allain with the employer's copy. Mr. Allain could not specifically remember initialling the slips but did confirm that the initials on the copies of the slips entered into evidence appeared to be his. All three referral slips list the *Employer* as being *Reliance Construction Group.*

17. According to Mr. Prudhomme, he and the other two men actually started working at approximately 7:30 a.m. on June 6th. Mr. Prudhomme and Mr. Allain both agree that the electricians left the site at their normal (for Fridays) 11 o'clock quitting time that morning having completed the required work shortly before that. Mr. Prudhomme said that they needed no supervision for the work they did that morning as the electrical rough-in for the new office had already been completed and it was therefore obvious to both him and the other journeyman, Brian Biscope, what work had to be done. The only exception to this was that one of Reliance's site supervisors, Bruno, asked Mr. Prudhomme if he could move a light fixture which the electricians were easily able to do after Bruno had showed them where he wanted it moved to.

18. On Monday June 9th, an arrangement was reached between ATG and Mr. Barry that satisfied the applicant that ATG's paycheques would not bounce in the future. As a result of this arrangement, the men returned to work for ATG on Tuesday, June 10th. The three men that actually worked on June 6th were never paid by Reliance. Rather, their next ATG paycheques included four hours pay for June 6th, as did the paycheques for all of the other men who had reported for work that morning but who never actually did any work.

19. It should also be noted that both parties led evidence concerning exchanges between the applicant and Reliance in the days and weeks following the application for certification having been filed. This evidence may have been relevant to the section 96 application but given that it principally related to positions taken by the parties subsequent to the actual date of application it was largely *self-serving,* and of little relevance, to the application for certification. As noted above, the section 96 application has now been withdrawn and therefore the evidence concerning these exchanges subsequent to June 6th is not set out herein.

DECISION

WAS RELIANCE THE *TRUE EMPLOYER*?

20. There is no dispute that Messrs. Prudhomme, Biscope and Daley all performed bargaining unit work, that is electricians' work, on the Project, for the majority of their working day on the date of application. There is also no dispute that all three of these men were employees of an employer on June 6, 2008. The only dispute is - who was that employer? The applicant asserts that it was Reliance while Reliance claims that it was ATG.

21. As both parties agreed, in determining who the true employer of these three men was on the date of application the Board must evaluate the particular circumstances of this situation based on

seven factors first identified by the Board in *York Condominium Number 46,* [1977] OLRB Rep. Oct. 645. However, since identifying the actual employer is obviously a factual determination, each case will depend on its own particular factual context. Further, no single one of the seven *York Condominium factors* (nor any single sub-set of these factors) will be determinative in every case. Rather the relative importance of these factors will vary on a case by case basis. The Board's approach in determining this issue was succinctly summarised in *Esso Imperial Oil Limited,* [1997] OLRB Rep. Sept./Oct. 849 in which it stated:

> 12 Although the Board is always prepared to consider any factor which is relevant, as a general matter, the factors which the Board has considered when faced with a "who is the employer" issue are the ones first compiled in the Y*ork Condominium, Supra*, decision:
>
> (1) who exercises direction and control over the employees when they are performing the work;
>
> (2) who bears the burden of remuneration;
>
> (3) who has the power to impose discipline;
>
> (4) who does the hiring;
>
> (5) who has the authority to discharge;
>
> (6) who do the employees perceive to be their employer;
>
> (7) the intention to create an employment relationship.
>
> 13 None of these factors is necessarily determinative, and the relative significance of any individual factor will depend on the circumstances of the particular case. Having said that, it is apparent that the object of the exercise is to assess the various factors, both individually and in the context of all the other factors, in order to ascertain who has fundamental control over the employment relationship, particularly where the factors point in different directions. In making the assessment and determination, the Board is more concerned with substance than with form; that is, the Board will not permit commercial form to obscure labour relations reality.

22. In applying the seven York Condominium factors to the facts of this case, both parties agree that the power to impose discipline and the authority to discharge were simply not relevant given that neither of these eventualities occurred, or was even contemplated, on, or in relation to, June 6th. Further, and again as both parties agree, the Board focuses on the substance rather than the form of the relationship and, therefore, in more recent years, it has often attached less significance to the employees' perceptions and the intention to create an employment relationship. Accordingly, there are three remaining factors which are of particular significance to determining this case.

The Burden of Remuneration

23. Although the three men ultimately received paycheques for their work on June 6th from ATG, the burden of remuneration still very clearly points to Reliance as being their actual employer. Even if his evidence is taken at its absolute best, during the June 6th phone call Mr. Demauro *guaranteed* to Mr. Barry that the men would be paid if they worked that day. Given that at the time he made this promise, Mr. Demauro had no reliable information concerning ATG's ability to pay the men, yet alone any authority to make such a guarantee on behalf of ATG, there can be no question that on the morning of June 6th he placed the ultimate burden of remuneration for the work done that day upon Reliance. Subsequent events, and particularly the fact that at some point during the following week Reliance was apparently able to persuade ATG to issue cheques to these men, do not have the effect of retroactively altering the significance of the obligation which Reliance accepted before the work began on the morning of June 6th.

24. The conclusion that it was Reliance, and not ATG, which bore the burden of remuneration is also the only reasonable interpretation of the written agreement which Mr. Barry and Mr. Allain signed on June 6th. As Mr. Allain agreed, Mr. Barry insisted that this document had to be signed as a condition for the three men starting work on the date of application and all of the evidence clearly leads to the conclusion that if it had not been signed that morning then the men would not have stayed on the Project. This written agreement, for which Mr. Allain sought and obtained the specific approval of Mr. Demauro, unequivocally states that Reliance will be paying the three named electricians for their work on that Friday. The fact that Reliance also made clear that it would be tracking their hours, apparently in an effort to *backcharge* ATG, does not alter the fact that Reliance had committed to pay the men regardless of what compensation it might thereafter be able to obtain from its subcontractor.

Hiring

25. There is no question that prior to June 6th all of the electricians on the Project, including Messrs. Prudhomme, Biscope and Daley, had been hired by ATG. However, when analysed in relation to the specific events which occurred on June 6th, this factor still lead to the conclusion that Reliance was the employer of these three men on that one day. Before Reliance intervened by way of Mr. Demauro's phone call to Mr. Barry, none of the electricians were prepared to work on the Project on June 6th. It was Reliance, and not ATG, that determined that at least some electricians had to remain on site to do the office relocation work. It was Mr. Demauro, rather than any member of ATG's management, who agreed to Mr. Barry's suggestion that three men would be required for the electrical work that Reliance (and again not ATG) had decided had to be done on June 6th. While it was Mr. Barry who ultimately decided which three men would do the work, he could only do this because Reliance had specifically agreed that it would pay for three men to work on that day. In this respect, Mr. Barry's decision about who those three men should be is essentially identical to his normal duties in relation to filling requests for men made by contractors to the applicant's hiring hall and certainly in no way establishes that it was Mr. Barry who *hired* the men as Reliance suggests.

The Exercise of Direction and Control

26. Although we accept the fact that these three skilled tradesmen did not require much direction and control to do their work on June 6th, this factor also points to Reliance, rather than ATG, as being the true employer. Firstly, and as noted above, it was Reliance, and certainly not ATG,

which determined what work had to be done on the date of application. Accordingly, in this general sense it was Reliance that *directed* the electricians to complete the office relocation work that day. Had Reliance not made the decision that this work had to be done that day, none of the electricians would have performed any work on the project on June 6th. Further, the only specific direction which the three men received on June 6th came from Reliance's site superintendent Bruno when he asked them to move the light fixture. This is not a great deal of direction and control but, by way of contrast, there was no member of ATG's management on site, or who was in anyway communicating with these men, that day and, as previously noted, all of the evidence leads to the conclusion that these men would not have accepted any direction from ATG on June 6th in any event given that the bounced paycheque issue remained outstanding.

Conclusion

27. As noted above the Board now generally attaches less weight to the intention (or lack thereof) to create an employment relationship and the perception of the employees in determining who the real employer is. However, in these circumstances, even these two more subjective factors are at best neutral. Even if it is accepted that Reliance did not intend to become the employer of the three electricians for June 6th, the evidence, and specifically the referral slips which Mr. Barry provided to Mr. Allain, does not suggest that the applicant or the men themselves in any way shared Reliance's intention. Further, there was no evidence to suggest that Reliance made clear to the applicant and/or the men, on June 6th, that it was not the employer despite the fact that it had agreed that it was going to pay them for their work and that Mr. Allain apparently accepted and initialled the applicant's referral slips which clearly identified Reliance as being the employer.

28. The Board accepts, as Reliance agued, that in determining who the employer is the Board's analysis should not simply focus on the date of application (as is often the case when determining whether an employee was performing bargaining unit work for the majority of his workday). However, here, when the broader temporal perspective suggested by the Board in such cases as *Esso Imperial Oil Limited, supra,* and *Monarch Corporation,* [2008] OLRB Rep. Jan./Feb. 76 (January 28, 2008), is considered it simply serves to underline how different the circumstances on the Project were on the date of application from those on the days before and after June 6th. Therefore the broader analysis which it urges the Board to adopt also suggests that Reliance, and not ATG, was the employer.

29. As noted above, it is not disputed that when the electricians performed work on June 5th and thereafter on June 10th their employer was ATG. However, as all of the evidence, and specifically the evidence of Mr. Barry and Mr. Prudhomme, makes clear, none of the electricians were willing to do any work for ATG when they first arrived at the Project on the morning of June 6th. The fact that any of these men did any electrical construction work that day has nothing to do with anything ATG did and resulted solely from the direct actions of Reliance. It was Reliance that decided, and then told the applicant and the men, what work had to be performed that day and how many men it was prepared to pay to do that work. Reliance made these decisions, and reached the necessary agreements with Mr. Barry to give effect to its decisions, without even consulting with, let alone seeking the approval of, ATG. The fact that the work that was done on June 6th was a result of Reliance's decisions and direct dealings with both the applicant and the electricians is also demonstrated by the fact that, on Monday, June 9th, when Reliance did nothing, no work was done. Therefore, what occurred on this jobsite on June 6th was very different from all other days and leads

to the conclusion that ATG was not the employer of the electricians with respect to the work they did that day.

30. For all of the reasons set out above, we conclude that at the very least RCO (possibly along with one or both of RCC and RCG), rather than ATG, was the employer of Messrs. Prudhomme, Biscope and Daley on June 6, 2008, for the purposes of this application for certification.

THE CORRECT NAME OF THE RESPONDING PARTY

31. Given the evidence that it currently has before it, the Board finds itself unable to definitively conclude what the correct name of the responding party should be. Nevertheless, it is clear that however the responding party is ultimately identified, RCO will form part of this description. Therefore, and as suggested (in the alternative to its principal position) by the applicant, the Board will proceed with this application with respect to RCO and will deal with the other aspects of the responding party's name, should the parties be unable to resolve this matter as between themselves, as set out below.

DISPOSITION

32. In its decision of June 16, 2008 in this matter, the Board determined the appropriate bargaining unit pursuant to section 158(1) of the Act.

33. On the basis of the information provided in the application, including the information and membership evidence filed by the applicant, the information provided under subsection 128.1(3) of the Act, and the conclusions of the Board set out herein, the Board is satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the applicant on the date the application was filed.

34. The applicant has asked that it be certified pursuant to section 128.1(13)(a) relying solely on the number of persons in the bargaining unit who are its members. The applicant is entitled to do so under section 128.1. There is nothing raised in this file by any party that would cause the Board to consider directing a representation vote.

35. The Board has received no objection from any employee within the time set in the Notice to Employees provided to the responding party for posting.

36. The Board is satisfied that it should certify the applicant.

37. Section 128.1(24) of the Act, which states as follows, provides for the issuance of more than one certificate if the applicant has the requisite support:

> If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126,
>
> ...

> (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13) (a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;
>
> ...

Therefore, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario in respect of all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Reliance Construction (Ontario) Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

38. Further, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant trade union in respect of all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Reliance Construction (Ontario) Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

39. However, despite the wording of the certificates which it is hereby issuing, in view of the fact that, as set out herein, the Board has not determined that Reliance Construction (Ontario) Ltd. constitutes the entire name of the responding party, for the purposes of this application, the Board will entertain a request to reconsider this decision in relation to the entire name of the responding party, should it be necessary to do so, and should such a request be made to the Board within 60 days of the date of this decision.

40. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

1575-08-R Canadian Construction Workers' Union, Applicant v. **Starland Contracting Inc.**, Responding Party v Universal Workers Union, Labourers International Union of North America, Local 183, Intervenor

Certification – Construction Industry – Trade Union – The Board was asked to determine whether the Canadian Construction Workers' Union was a construction trade union within the definition set out in s. 126 of the Act - The Board identified the criteria for the determination as (a) the trade union's constitution; (b) the trade union's history, antecedents and associations; (c) the union's organizational base and collective bargaining practices, including the kinds of employees and bargaining units the union represents; (d) the union's

relationship with its parent and other unions; (e) the presence of a hiring hall and/or out-of-work list; (f) whether the union represents one or more trades; (g) whether the union operates welfare, pension or training funds; and (h) whether the union aspires to bargaining rights with more than one employer – The Board held that the key criterion was the union's organizational base and collective agreement practices – The CCWU was able to demonstrate that it has two valid collective agreements and one voluntary recognition agreement – The Board found that CCWU satisfied a clear majority of the criteria – Matter continues

BEFORE: *Jack J. Slaughter*, Vice-Chair.

APPEARANCES: *Eric Comartin* and *Tony Dionisio* appearing for Canadian Construction Workers' Union; *David Borwick* and *Adel Qasem* appearing for Starland Contracting Inc.; *Sean McFarling* appearing for Universal Workers Union, Labourers International Union of North America, Local 183.

DECISION OF THE BOARD; July 17, 2009

1. This is a certification application filed on August 19, 2008 by the Canadian Construction Workers' Union ("the CCWU") pursuant to section 128.1 of the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995 c.1 as amended (the "Act") with respect to Starland Contracting Inc. ("Starland"). Universal Workers' Union, Labourers International Union of North America, Local 183 ("Local 183") intervened herein.

2. By decision dated April 28, 2009, for reasons given therein, the Board ruled that Local 183 did not have status to intervene in this matter.

3. This decision deals with a discrete, but important issue: whether or not the CCWU is a construction trade union within the definition set out in section 126 of the Act..

4. The Board heard *viva voce* evidence from two witnesses called by the CCWU: Henry Pereira and Joel Filipe. The CCWU also entered into evidence substantial documentary materials. Starland chose not to call any witnesses, but did cross-examine the CCWU's witnesses. At the end of the day, the CCWU and Starland do not greatly disagree on the relevant facts, but do disagree on the legal conclusions to be drawn from those facts.

THE FACTS

5. Henry Pereira was the CCWU's main witness. At the relevant times, up to and including the application date of August 19, 2008, Mr. Pereira was a Business Representative/Organizer and Special Assistant to the President for the CCWU. He also was appointed a Trustee on the CCWU's multi-employer benefit and pension trust funds on July 2, 2008. Joel Filipe, the CCWU's Vice-President, also testified. He was responsible for reviewing employer remittances for accuracy and compliance with the relevant collective agreements up to and including the date of application.

6. Mr. Pereira testified about the CCWU's Constitution, its organizing and collective bargaining practices, and other aspects of its administration. The CCWU was initially organized by former construction workers and construction union business representatives and officers from Local 183 including Tony Dionisio, Joel Filipe, Henry Pereira and Victor Ferreira. Cumulatively, they had decades of construction industry experience.

7. With respect to the CCWU's constitution, Mr. Pereira testified that it originally referred to the construction industry only, but was amended on December 2, 2007, such that it now provides at Article 1(d) that "the Union will seek to organize in all field's [sic] of the Canadian Construction and Industrial Sectors".

8. With respect to the CCWU's organizing and collective bargaining practices, Mr. Pereira's evidence was focussed on three employers, namely Canada Wide Group Ltd. ("Canada Wide"), Callaway Construction Corp. ("Callaway") and Pine Valley Enterprises Inc. ("Pine Valley"). Mr. Pereira also testified about other employers, and the CCWU's organizing and collective bargaining activities, in a more general manner.

9. Mr. Pereira testified that Canada Wide entered into a voluntary recognition agreement ("VRA") with the CCWU on February 26, 2008. He stated that on that date the CCWU represented 2 of the 3 employees in the "all construction employees" bargaining unit specified in the VRA, who were performing interlocking, concrete work and sidewalk repairs at a project located at Mavis and Matheson in Mississauga. Three days later on February 29, 2008, the CCWU and Canada Wide concluded a "Concrete Restoration" collective agreement. It was modelled on a similar collective agreement with which Mr. Pereira was familiar from his many years as a Business Representative/Organizer with Local 183. Canada Wide only requested changes to the monetary items. The evidence of Messrs. Pereira and Felipe indicates that the CCWU received employer remittances of union dues, benefit and pension contributions for the work months of March to August 2008 inclusive from Canada Wide, and issued clearance and referral slips for persons working for Canada Wide, or dispatched to work at Canada Wide, during that time frame.

10. For Callaway, Mr. Pereira testified it entered into an "all construction employees" VRA with the CCWU on April 5, 2008. Callaway employed no construction employees on that date, but Mr. Pereira described the VRA as a "pre-hire agreement". Further to that pre-hire agreement, Mr. Pereira cleared four members of the CCWU to work for Callaway on April 7 and 8, 2008 to three separate projects, with two of them going to work at an arena in the vicinity of Yonge and Finch in Toronto. On April 21, 2008, Callaway and the CCWU entered into a "Road Building" collective agreement effective from April 1, 2008 to April 30, 2010. The evidence of Messrs. Felipe and Pereira indicates that the CCWU received employer remittances of union dues, benefit and pension contributions for the work months of April to August 2008 inclusive from Callaway, and issued further clearance and referral slips for persons working for Callaway or dispatched to work at Callaway during that time frame.

11. Mr. Pereira testified that the CCWU and Pine Valley entered into a VRA covering "all construction employees" on May 16, 2007. The validity of that VRA was litigated in the context of a certification application brought by Local 183 against Pine Valley in Board File No. 0910-07-R. In a series of decisions dated October 29, 2007; January 9, 2008; and February 25, 2008, the Board dismissed Local 183's challenge to the validity of the VRA. Local 183 filed for judicial review of the Board's decision in Divisional Court File No. 201/08, but that application was abandoned on June 9, 2009. The Minister of Labour appointed a Conciliation Officer to confer with the CCWU and Pine Valley to endeavour to effect a collective agreement in May 2008. A "Landscaping" collective agreement was concluded between the CCWU and Pine Valley on June 13, 2008. The parties executed a Letter of Understanding on the same date exempting a list of jobs from "all provisions of the collective agreement". No remittances were made by Pine Valley, nor were any clearance or referral slips issued by the CCWU, during the relevant time frame.

12. With respect to other employers, Mr. Pereira testified that the CCWU was undertaking organizing efforts in both the construction and industrial areas, but "concentrating on the construction sector". As of August 19, 2008, the date of application, the CCWU had filed outstanding certification applications for at least 6 more construction industry employers, and had 2 large industrial employers under collective agreement. Approximately 25 employees were working under construction collective agreements and approximately 475 employees were working under industrial collective agreements on that date, but 1/3 of the CCWU's revenues at the time were derived from the construction employees due to a higher dues structure.

13. Finally, Mr. Pereira testified about the creation and implementation of CCWU multi-employer Benefit, Pension and Training Funds, as well as the operation of the CCWU's hiring hall. His oral testimony, supported by substantial documentary material, establishes that the CCWU had recognized multi-employer Benefit, Pension and Training Trust Funds in place before the date of application. The evidence on the "operation of the hiring hall" was much more sparse, but was not challenged by Starland. The evidence before the Board consists of clearance and referral slips issued to Canada Wide and Callaway employees by the CCWU, and Mr. Pereira's assertion that the CCWU's hiring hall provisions are "exactly the same" as those of Local 183.

LEGAL ARGUMENT

14. The CCWU says that the criteria a trade union must meet to be recognized as a construction industry trade union are set out in the following cases: *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82; *Brick and Allied Craft Union of Canada*, [2001] OLRB Rep. May/June 615 (May 2, 2001); *Empire Continental Management Inc.*, [2008] OLRB Rep. Jan./Feb. 21 (January 29, 2008). The CCWU asserts it has met and surpassed all the criteria necessary for it to be considered a construction industry trade union. The CCWU says that it has remedied the deficiencies identified by the Board in *Empire supra* where the Board found the CCWU was not a construction industry trade union.

15. Starland agrees that the CCWU is a trade union for the purposes of the Act, but denies that the CCWU is a construction industry trade union within the definition contained in section 126 of the Act. Starland urges the Board to carefully examine whether the CCWU truly is a trade union that "according to established trade union practice, pertains to the construction industry". Starland says that the CCWU exhibits certain characteristics of a construction industry trade union, but not enough of them. Starland further asserts that each collective agreement relied on by the CCWU is flawed. Additionally, Starland refers the Board to its decision in *United Brotherhood of Carpenters and Joiners of America, Local 1072*, [1997] OLRB Rep. Sept./Oct. 942.

ANALYSIS AND DECISION

16. Section 126 of the Act defines a construction industry trade union as a "trade union that according to established trade union practice pertains to the construction industry".

17. The Board has elaborated on this definition. In *Ontario Hydro supra*, the Board described the typical characteristics of a construction trade union at paragraph 117:

> 117. What does a construction trade union look like? A construction trade union does not have to restrict itself to representing one or a few trades.

> Most non-building trades construction unions do not, and not even all building trades unions do so outside of the ICI sector. A construction trade union does not have to operate a hiring hall, although the vast majority do. A construction trade union doesn't have to operate an out-of-work list (i.e. a list of unemployed members who can be referred to employers who are obliged to hire unemployed members before they can hire "off the street") but there are few (if any) which don't (even Teamsters Local 91 in Ottawa which does not operate a hiring hall as such keeps an out-of-work list). A construction trade union does not have to operate health, welfare, pension or other benefits plans, either jointly with employers or alone, or operate a training or apprenticeship program, but most do. A construction trade union does not have to have or aspire to bargaining rights with more than one employer, but again, most do. Although a union does not *have* to have any of these characteristics in order to be a construction trade union, the fact is that every construction trade union of which the Board is aware (both on the materials before the Board in this case, and as the expert tribunal in the field) has at least some of them. That is, these characteristics indicate the *practices* which have become established in the construction industry. The fewer of these characteristics that a trade union has, the less likely that it is a construction trade union. The PWU has *none* of them.

18. In *UBCJA, Local 1072 supra*, the Board made the following observations about construction industry trade union status at paragraphs 74 and 75:

> 74. It seems to me, therefore, that in deciding whether a trade union organization is a "section 126 union", one has to look at how Local 1072 has conducted itself in relation to the construction industry, and how it fits (or doesn't) within the matrix of trade union practices prevailing in the construction industry. That is a fact-finding exercise, not a linguistic one. The answer is found by looking at the industry, not by looking in a dictionary. What one has to consider are such factors as: the constitution of the disputed union; the union's organizational history, antecedents or associations; the union's organizational base and collective-bargaining practices; the kinds of employees and bargaining units that it represents; its relationship with its parent union and other trade unions – particularly construction unions; its relationship with employers, noting particularly whether, or the extent to which, those employers carry on business in the construction industry in whole or in part; and so on – all weighed against the background of "established trade union practice" in the construction industry (i.e. the practice of *construction trade unions*, because the definition of trade union in section 126 applies "*in this section* and in sections 127-168").
>
> 75. One has to look at how the disputed organization is structured and how it functions, then compare that pattern to the structure and functioning of union organizations and institutions that are unquestionably part of the construction industry.

19. Therefore, cumulatively, the characteristics the Board may consider in determining whether a trade union is a construction industry trade union are:

(a) the trade union's constitution;

(b) the trade union's history, antecedents and associations;

(c) the union's organizational base and collective bargaining practices; including the kinds of employees and bargaining units represented by the trade union;

(d) the trade union's relationship with its parent union and other unions;

(e) whether the trade union operates a hiring hall and/or out of work list;

(f) whether the trade union restricts itself to representing one or a few trades;

(g) whether the trade union operates welfare, pension or training funds;

(h) whether the trade union aspires to bargaining rights with more than one employer.

20. Furthermore, within characteristic (c), a very important, although perhaps not essential element, is the existence of at least one VRA or collective agreement applicable to the construction industry: *Ontario Hydro supra, BACU supra, Empire supra* at paragraph 82.

21. The Board now turns to an examination of the relevant characteristics in this case. Starland concedes that two of them are met: the CCWU does have multi-employer benefit, pension and training trust funds in place; and it does aspire to bargaining rights with more than one employer. Starland questions whether the CCWU "makes the grade" on the balance of the characteristics.

22. The Board finds that the constitution is a characteristic in the CCWU's favour. It specifically refers to organizing in the "construction sector". The addition of the reference to the industrial sector in 2007 does not impair the original emphasis on construction, as many construction trade unions also organize industrial employees, such as Local 183, the International Union of Operating Engineers, Local 793 (the "IUOE") and the Christian Labour Association of Canada (the "CLAC").

23. The CCWU does not have a parent union or local unions so that characteristic is neutral.

24. The characteristic of trade union history, antecedents and associations provides some support for the CCWU's position. Unlike the PWU and UBCJA, Local 1072 in the cases referred to above, the CCWU does not have a history of operating as an industrial union that precedes or predominates over its activities in construction. Rather the CCWU was formed by persons who had lengthy experience as construction industry workers and construction industry business representatives and officers at Local 183, the largest and most active construction local union in Ontario, including Tony Dionisio, Henry Pereira, Victor Ferreira and Joel Filipe. They formed the CCWU after being expelled from Local 183. The initial constitution of the CCWU only referred to representing workers in the construction industry. It was later amended to include reference to

industrial work. In short, the CCWU was formed by persons who had been construction workers and construction union business representatives and officers for the purpose of organizing construction workers. This history is a characteristic in favour of finding the CCWU is a construction industry trade union.

25. The CCWU does not restrict itself to representing one or a few trades, but has demonstrated a practice of seeking to represent all employee units. Such a practice is not uncommon for construction industry trade unions. Again, Local 183, the IUOE and the CLAC represent many all employee units. This characteristic does not assist the CCWU, but neither is it detrimental to the CCWU's quest to be recognized as a construction industry trade union.

26. The evidence with respect to the operation of a hiring hall or out of work list by the CCWU is thin. There is uncontested evidence the CCWU has referred members to work for at least two employers. No out of work list or hiring hall rules were introduced into evidence, but the CCWU is still very much a nascent trade union. This factor tolls mildly in favour of construction industry trade union status for the CCWU.

27. The key criterion is the union's organizational base and collective bargaining practices. The Board will particularly scrutinize the CCWU's collective agreements and relationships with employers. On the evidence presented, the Board is satisfied at a minimum that the CCWU has established that it has 2 valid collective agreements and 1 valid VRA with construction industry employers. The CCWU entered into a valid VRA with Canada Wide on February 26, 2008 as it represented a majority of employees at work in the bargaining unit on that date. It shortly thereafter concluded a Concrete Restoration collective agreement with Canada Wide, which operated in typical fashion for a construction industry collective agreement from March 2008 onward. The CCWU's collective agreement with Callaway came via a pre-hire agreement, which is a recognized form of recognition in the construction industry: see *Nicholls Radtke*, [1982] OLRB Rep. July 1028; *Intracorp Developments Ltd.*, [2000] OLRB Rep. Sept./Oct. 873 (October 27, 2000). In terms of the language of *Intracorp*, the CCWU's VRA with Callaway constitutes a valid pre-hire agreement in that there were no employees in the bargaining unit on the date the VRA was entered into, Callaway had a need to have work performed, and the CCWU had available persons to perform it, who indeed were referred to and did work at Callaway. The CCWU subsequently signed a collective agreement with Callaway, which has been in operation from April 2008 onward.

28. The Board has previously determined the CCWU's VRA with Pine Valley to be a valid construction industry VRA. Local 183's challenge to the Board's decision to that effect has now been abandoned. Although no employees worked under the subsequently executed collective agreement up to and including the date of application, this was due to the exclusion of ongoing projects from the operation of the collective agreement by the Letter of Understanding. This fact does not make the collective agreement invalid, however. For the purpose of the instant analysis, it is sufficient to find that the Pine Valley VRA is a valid VRA for a CCWU construction industry bargaining unit.

29. Therefore, the CCWU has satisfied a clear majority of the criteria necessary to achieve construction industry trade union status. Most importantly, the CCWU represents employees in at least three construction industry bargaining units. It not only aspires to represent construction industry employees, but it has also put into place the structures typical of construction industry trade unions and it is actively representing at least three groups of construction employees in collective

bargaining relationships. Taken in total, this is enough to constitute the CCWU as a construction industry trade union.

30. Accordingly, the Board finds that the CCWU meets the definition of a construction industry trade union set out in section 126 of the Act.

31. The Board hereby refers this matter to the Registrar to schedule further hearing dates to deal with the outstanding employee status disputes.

32. This panel is seized.

1265-08-R Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Applicant v. **Struct-Con Construction Ltd.**, Responding Party

Bargaining Unit – Certification – Construction Industry – Status – The Carpenters sought to certify employees of Struct-Con - The issue before the Board was whether certain persons should be considered employees for the purposes of determining the number of employees in the bargaining unit - The persons in question were employed by the union to assist in organizing and sought employment with Struct-Con for this purpose – Struct-Con argued that while these persons may be employees for all other purposes, they should not be considered employees for the purpose of the bargaining unit count because their overriding duty to the union (as their employer) precludes them from making a free designation of a representative – Struct-Con also argued that the individuals' employment by the Carpenters constituted undue influence on the part of the union - The Board rejected the employer's argument, holding that it was not the Board's role to assess the motives of anyone in the bargaining unit: under s.128.1(4) the Board is limited in its inquiry to whether the union represents a majority of persons in the bargaining unit on the date of application, regardless of how they got there or how they formed their opinion about being represented by the union – Accordingly, the persons in question were found to be part of the bargaining unit on the date of application – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Steven Bosnick* and *Mike Humphries* for the applicant; *Greg McGinnis* and *Jim Strickland* for the responding party.

DECISION OF THE BOARD: July 16, 2009

1. This is an application brought pursuant to the construction industry provisions of the *Labour Relations Act, 1995,* S.O. 1995, ch.1 as amended ("the Act"), and in particular section 128.1 of the Act. The issues that the Board is dealing with in this application relate to the status of certain persons who are alleged to be in the bargaining unit. The applicant ("the Union") states that there are 3 employees, of whom the responding party employer ("Struct-Con") says none were employees on the application date. More precisely, Struct-Con says that two of them, Chris Campbell and Simpson Auguste, should not be considered as employees in the bargaining unit for the purposes of

determining the percentage of employees in the bargaining unit who are members of the Union. Struct-Con says there were 5 employees, all of whom were different from the 3 the Union proposes; the Union says none of those 5 were employees in the bargaining unit on the date of application.

2. This decision deals with two of the persons, Chris Campbell and Simpson Auguste, whom the Union says ought to be part of the "count", that is that they should be considered employees in the bargaining unit for the purposes of determining the percentage of employees in the bargaining unit who appeared to be members of the Union. Struct-Con takes the position that they should not.

Facts

3. Chris Campbell was and is employed as a full time organizer by the Union. He receives a salary on an ongoing basis for his work in organizing. Simpson Auguste is a member of the Union who works on the tools as a carpenter when he is able to obtain employment. In July of 2008, Mr. Auguste was out of work. He attended at the hiring hall seeking employment. There were no requests from employers for carpenters that day, but Mr. Auguste was directed to speak to Mr. Campbell. Mr. Campbell asked him if he would be interested in assisting him in organizing efforts in the construction industry. This work would involve obtaining employment as a carpenter in order to assist in organizing. On behalf of the Union, Mr. Campbell offered him $20.00 per hour for assisting him. Mr. Auguste agreed.

4. The parties disagreed on the exact nature of Mr. Auguste's relationship to the Union. I conclude that he was not traveling with Mr. Campbell in whole or in part to find employment. He was employed by the Union to assist in organizing. That was all that he and Mr. Campbell were doing before working for Struct-Con, and Mr. Auguste was being paid by the Union for that time. I do not accept the Union's assertion that Mr. Campbell was assisting Mr. Auguste in looking for employment.

5. On July 9 or 10, 2008 they approached Jim Strickland, a representative of Struct-Con, for employment. He agreed to engage them to perform certain roofing work on a school project. Struct-Con originally took the position that they were engaged as sub-contractors, but in the face of overwhelming evidence conceded that in any legal sense, they were employees.

6. There was also some discussion about how much the two received. They were paid for their work at Struct-Con. Mr. Carlos Pimental, Director of Organizing, testified that members such as Mr. Auguste were to be paid only the difference between the rate they received from the employer whom they were organizing and the appropriate wage rate under the Provincial Collective Agreement. However, that did not happen in this case and Mr. Auguste was paid both his salary from the Union and the payment from Struct-Con. Thus both persons were paid a wage by the Union at the same time that they were earning wages from Struct-Con as employees engaged in carpentry work.

7. The two men were engaged in carpentry work on the roof of the Nihanney School on the application date, July 18, 2008. That day was a Saturday. The Union's position is that there were only 3 employees at work on that day. Struct-Con's first position was that there were 13 other persons at work on that date (presumably its normal employee complement) but later revised this number to 5. Both men ceased to work for Struct-Con shortly after the application was filed.

Issue to be decided

8. Struct-Con's argument in this case is a very specific one that raises a relatively new issue for the Board.

9. First, for most purposes, Struct-Con does not deny that Mr. Campbell and Mr. Auguste were employees. That is, Struct-Con retained them to provide labour on a construction site in exchange for monetary consideration. It agrees that they performed bargaining unit work for a majority of time on the application date.

10. Second, it accepts that when a union seeks to place members on a job to assist it in organizing the workforce it is engaged in a lawful and proper purpose. (*National Labour Relations Board v. Town & Country Electric Inc. and Ameristaff Personnel Contractors Inc.*, (1995) 516 US 85; *Lecompte Electric Inc.* [2008] OLRB Rep. March/April 234 (April 15, 2008); 2008 CanLII 17042). Indeed to some extent Struct-Con acknowledged that this is protected activity under the Act and that the discharge of a person from employment because the employer discovers he is on a job for organizing purposes is a violation of the Act, likely sections 70 and 72. (*1443760 Ontario Inc c.o.b. Swing Stage Equipment Rentals Ottawa*, [2007] OLRB Rep. May/June 485 (June 15, 2007); 2008 CanLII 22573).

11. Struct-Con's argument is one that is narrowly applicable to the issue of whether they are employees for the purposes of determining the number of employees in the bargaining unit who appear to be members of the Union. It asserts that they are not employees for the purpose of "the count", although they may be for many if not all other purposes. The word "employee" is not defined in the Act except for the purposes of including persons who meet the definition of dependant contractor. Struct-Con argues that the Board is therefore free to give a purposive meaning to the term in applying subsection 128.1 (4) to the facts of this case. In this respect it argues that there is nothing inconsistent with the propositions it concedes above. Sections 70, 72 and 76 all refer to "persons" rather than "employees", and hence it is not necessary that a person be an employee for the purpose of determining an unfair labour practice. In any event, the Board is able, in its view, to restrict the meaning of employee for purposes consistent with the Act in applying subsection 128.1 (4) when it determines the number of employees in the bargaining unit.

12. Its arguments as to why the Board should adopt this definition are, as I understood them, as follows.

13. First, Mr. Campbell and Mr. Auguste were not placed on the job to organize other employees. On the Union's theory of the case, there were only three employees, including the two organizers. Thus, on the Union's theory, there was no bargaining unit that the Union could organize. They were not organizing other employees but became employed briefly so that they could constitute a bargaining unit that would otherwise not exist. (To be clear, Struct-Con asserts that there were 5 other persons who were employees in the bargaining unit).

14. Second, Struct-Con argues that the Act does not promote collective bargaining per se, but in the words of section 2 paragraph 1:

> To facilitate collective bargaining between employers and trade unions that are the freely - designated representatives of employees.

15. That is, the Act facilitates collective bargaining where employees have free choice about the selection of a bargaining agent. Counsel for Struct-Con argues that the unfair labour practice provisions of the Act are directed to ensure that employees can exercise a free and rational choice without any interference by external factors or undue influence. Thus an employer may speak its mind, but may not make statements that the Board considers to be undue influence. Similarly, in its view, the union will not be prevented from seeking to organize those employees by sending in an organizer to join the workforce to obtain membership cards from employees, again within the limitations of the Act. In such circumstances employees are free to consider any reasons to choose to join or not to join a union. In counsel's argument, the employees must be free to do so without undue interference by either of the institutional parties.

16. In this case the two organizers are not in that position. Both are employed by the Union, Mr. Campbell on a permanent basis and Mr. Auguste on a temporary basis. As such they owe a duty to their employer, the Union, and any action that did not promote a successful resolution to the organizing campaign would jeopardise their continued employment with the Union. Thus their ability to make a "rational choice" has been eliminated by their overriding duty to their other employer.

17. Third, Struct-Con argues that their employment by the Union constitutes undue influence on the part of the Union. It argues that the employees should be free of any such influence from either of the institutional parties and that the prospect of continued employment with the Union places those two persons in a position of identifying their interests with those of one of the institutional parties rather than simply making their own choice about their own best interest as employees.

18. The Union argued that so long as persons are employees of Struct-Con, applying the tests set out in *York Condominium Corporation No. 46* [1977] OLRB Rep. Oct. 645, and were employed for a majority of the day in the work of the bargaining unit as set out in *E & E Seegmiller Limited* [1987] OLRB Rep. Jan. 41, the Board should not inquire further into their circumstances and should not adopt any other definition for the purposes of subsection 128.1 (4).

Analysis

19. Dealing with Struct-Con's arguments in reverse order, I do not accept its characterization of employees as a neutral group caught between two institutional parties who are vying for their support. No doubt labour relations often feels that way to an employer but this is a false construct. An employer and an employee are bound together by a contract of employment. Each brings disparate and conflicting desires to that contract. The terms of the contract reflect the bargaining strength of the two parties, as well as a recognition of how much the other party needs for the agreement to be worth entering into. While a contract of employment may embody a great area of shared goals and interests, it remains one where the interests of the two parties always carry the potential for conflict. The interests of the two parties will always, to some extent, conflict.

20. A Union on the other hand seeks to be a statutorily defined agent for a group of employees. It brings this application for certification so that it may obtain the exclusive right to bargain on their behalf. In any representational situation, there may well be conflicts among groups in a bargaining unit, or between members and the union itself. However, while the interests may differ and conflict at times, the relationship is essentially one of the entire employee group as principal and the Union as the kind of agent defined in the *Labour Relations Act*. The relationship is

based on shared or approximately shared goals. The extent to which the union is able to portray itself as the champion of those shared goals will define its success in its quest for bargaining agent status. The greater the extent to which the union can persuade the employees that their interests are identical, the more success it is likely to have in organizing.

21. With respect to the second argument, that the employee who is paid by the union has a conflict of interest, I do not accept Struct-Con's argument. Essentially, the argument asks the Board to examine and to give a weight or value to the motives of a person who signs a membership card. Again the argument posits a set of interests of employees that are distinct and separate in the same way for both employer and union. In this case, both Chris Campbell and Simpson Auguste would see their long term interests as tied to the Union and not to the Employer. This is no different from the perspective of an employee who is aware that the job is winding down and who faces a prospect of a layoff in a few days with no prospect of further work on the horizon, but who sees advantages in a union hiring hall. Similarly a person who has a long term employment relationship with an employer that endures through slow times as well as times of more intense activity, will often have a greater sense of identification with the employer as a source of future work than will a casual employee, and may see less advantage in a union hiring hall. Such person may nonetheless be attracted to the greater bargaining leverage of a union, or he or she may perceive the Union's strength in bargaining for the entire bargaining unit as negatively affecting their own position in the employee group. The variation on these types of overlapping and contradictory individual motives is infinite. Absent fraud, coercion or intimidation that deprives an employee of the ability to make a decision about whether or not to join a union, it is simply not appropriate for the Board to assess the motives of anyone in the bargaining unit. Nothing in the Act directs the Board to do so, and subsection. 128.1 (4) and (5) suggest entirely the contrary conclusion. To do otherwise would cast the Board in a position of telling an employee what his or her interests are and what the range of their permissible rational thoughts or choices might be. Such a role is not one the Board should take.

22. The Board dealt with a similar argument in *Simpsons Limited* [1984] OLRB Rep Oct. 1520. In that case the employer sought to exclude a group of employees who had been served with a notice of layoff shortly before the application for certification was filed. The employer argued that the Board ought not to consider them to be employees since those employees, once they received a notice of termination longer have a continuing interest in their employment relationship with the employer. The Board rejected that argument concluding that it would not examine the depth or possible longevity of the employees' attachment to the workplace or to their interest in the bargaining unit. The Board concluded simply that the persons in question were at work in the bargaining unit on the date of application and nothing the parties or the Board did could or would change that fact. The Board concluded it had no authority to "deem" persons not to be employees on the application date when in fact they were.

23. The current provision is section 128.1(4) which directs the Board to determine the percentage of employees in the bargaining unit who appear to be members of the union "as of the date the application is filed". Nowhere in section 128.1 is there any suggestion that the Board may or ought to find that persons who were employees in the bargaining unit are not employees for the purpose of the calculation of the proportion of "employees" who appear to be union members under subsection 128.1(4).

24. The first argument – that the organizers are not organizing but are obtaining employment with the employer so that they may constitute the bargaining unit itself is an attractive one, but one

that I ultimately do not accept. On the Union's theory of the case there was no bargaining unit for the Union to organize on the date of application unless the organizers were working in it. At first blush it does seem to be an artificial exercise that has nothing to do with organizing employees, but rather using the mechanisms in the Act for the establishment of bargaining rights in order to bind an employer to a collective agreement or an obligation to bargain one in order to represent employees who will become employed in the future.

25. While this argument is attractive, I am not persuaded that it should prevail. Like the second argument, it is premised on an assertion that there is a "right" way for a union to promote the interests of working persons and to obtain bargaining rights and a "wrong" way to achieve exactly the same end. The simple question the Board asks is whether the union represents a majority of persons in the bargaining unit, regardless of how they got there or how they formed their opinion about being represented by the Union. To look beyond that is to enter the realm of philosophical value judgments rather than to apply the Act.

26. On that philosophical level the Union's actions may be regarded in a more positive light. Given the construction industry's fluctuating and often short term employment, any organizing of employees of one employer involves both the representation of those persons and the securing of employment opportunities for other members of the Union at a future date. In that sense the Union has already organized many of the persons in the potential pool of employees from which the employer will draw, and it seeks to promote their interests. The reality of bargaining in the construction industry is that, before a union can secure any significant benefits to employees in one collective agreement, it must already represent a significant number of employees and bargaining units other than the employer that is the responding party in any one application. The interest of those other members are also at stake in the organizing of one employer.

27. It is also true that an employer may structure its affairs to ensure that it does not ever have to negotiate with a union, despite the fact that it controls work that employs many people in many trades. There are general contractors who never hire any construction employees, or never hire persons in certain crafts (generally mechanical trades) and subcontract all work with the effect that no union can organize the persons who work on that general contractor's work site as employees of the general contractor that ultimately controls the work opportunities. This no doubt appears to be "unfair" to trade unions in that they are never able to deal with the ultimate source of work on a site, but it is not a violation of the Act, nor is there anything in the Act that prevents an employer from doing so.

28. In this case Struct-Con chose to engage two persons in circumstances in a contractual relationship such that Struct-Con must have known, if it addressed the issue, was or was likely to be found to be an employment relationship. That decision brings with it the inherent possibility that Struct-Con would ultimately need to deal with a bargaining agent for those employees.

29. I do not mean to suggest that either Struct-Con's approach or the opposite one articulated above is the correct philosophical approach. Rather, it is sufficient to find that the Act does not compel or even contemplate the kind of analysis of "true" versus "artificial" employees in assessing a union's strength in a bargaining unit. The result is not one that is so far removed from the legitimate interests and concerns of parties in the construction industry that it somehow runs contrary to the scheme of the Act or creates an absurdity. I therefore reject Struct-Con's argument in this respect.

30. In fact, of course, the employer's argument is that there were 5 other employees in the bargaining unit on the application date. If there were, they too will be in the bargaining unit and the Union's application will be dismissed.

31. For these reasons, I find that Mr. Campbell and Mr. Auguste were employees in the bargaining unit on the date of application and they are part of the bargaining unit for the purposes of the Board's determination under subsection 128.1(4). The parties are directed to write to the Registrar with their available dates for the continuation of this matter, and to provide an estimate of the number of days that will be required to complete the case.

0239-09-G International Brotherhood of Electrical Workers, Local 303, Applicant v. **V.K. Mason Construction Co.**, Responding Party

Construction Industry Grievance – Discharge – The union argued that a union steward's discharge for failing to comply with the employer's safety policy was void *ab initio* because of the employer's failure to contact the union prior to the discharge, in violation of the collective agreement – The Board found that the employer's telephone message to the union regarding "an issue with fall protection" was not clear and definitive enough to alert the union to the imminent discipline; also, the notice to the union was inadequate because it did not occur before the steward was discharged – Furthermore, the collective agreement provided mandatory substantive rights to stewards – The termination of the steward in violation of these rights rendered the discharge void *ab initio* – Grievance allowed

BEFORE: *Mark J. Lewis*, Vice-Chair.

APPEARANCES: *Ron Lebi, Peter Wall* and *Mike Hill* for the applicant; *D. J. Shields* and *Geoff Green* for the responding party.

DECISION OF THE BOARD: July 15, 2009

1. This is the referral of a construction industry grievance to arbitration before the Board under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The applicant is the International Brotherhood of Electrical Workers, Local 303 (the "Union" and /or "Local 303") and the responding party is V. K. Mason Construction Co. (the "Employer" and/or "Mason"). The grievance concerns the March 17, 2009 discharge of Mike Hill for allegedly violating the Employer's site safety policy.

THE FACTS

2. The basic facts which are relevant in this matter are not complex.

3. The Employer is currently engaged in the construction of the *Thorold Co-Generation Plant* (the "Project") for which it has entered into a collective agreement with the Lincoln, Welland, Haldimand Building Trades Council and various Building Trades Unions including Local 303 (the "Collective Agreement"). The Collective Agreement is effective from February 1, 2008 until January

31, 2011. Members of Local 303 have been performing electrical construction work on the Project, pursuant to the terms and conditions of the Collective Agreement, since 2008.

4. Mr. Hill is a journeyman electrician and a member of Local 303. He was dispatched by his Union to work at the Project for Mason commencing on January 12, 2009. On or about March 3rd, 2009 he was appointed as a Local 303 steward for this Project.

5. The events that gave rise to Mr. Hill's discharge occurred on the morning of March 17, 2009. Geoff Green, Mason's Safety Manager for the Project, testified that he was conducting the daily safety tour of the site, on that morning, when he noticed Mr. Hill standing on top of a transformer. Mr. Green claimed that when he first observed Mr. Hill, from some fifty feet away, he (Hill) was not *tied-off*. Mr. Green stated that despite the distance, he could tell this was the case because he clearly saw that Mr. Hill had one of the lanyard hooks of his fall arrest system in his hand while the other was hooked into the cross strap of his safety harness. As the top of the transformer is well over the six foot height at which workers on this site are required to be tied-off, Mr. Hill was, according to Mr. Green, in clear violation of Mason's site safety policy. Mr. Green and various other persons who were on the safety tour approached Mr. Hill. By the time they got close enough to speak to the grievor, Mr. Green stated that Mr. Hill had tied-off. As per Mr. Green's orders, Mr. Hill was subsequently brought down from the top of the transformer by a man-lift.

6. Later that day, Mr. Hill was interviewed about this incident by Michael Moriarty who was, at the time, Mason's Construction Manager for the project. Mr. Moriarty was the person who made the decision to discharge Mr. Hill on the afternoon of March 17th. He claimed he did this having first reached the conclusion that Mr. Hill had been on top of the transformer without being tied off, a fact that Mr. Moriarty claimed that Mr. Hill had admitted to this during his interview, and had therefore violated the site safety policy. Mr. Moriarty's view was that as of March 1, 2009, when Mason's *new zero tolerance policy* concerning failing to tie-off became effective, he had no discretion in how to deal with this situation and that discharge was the only penalty which he could impose.

7. Mr. Moriarty confirmed that he was aware that Mr. Hill was Local 303's steward on this site and that he had therefore sought to contact the Union prior to discharging Mr. Hill. His evidence was that he had done this by asking John Rowell, Mason's General Electrical Superintendent, to call Peter Wall, Local 303's Business Manager. Mr. Moriarty's evidence was that he confirmed that Mr. Rowell had phoned Mr. Wall and left a message about this situation prior to discharging Mr. Hill.

8. The only other person who gave evidence in this matter was Mr. Hill and his version of events was somewhat different from that of the Employer's two witnesses. His evidence was that he had been tied-off at all relevant times. Mr. Hill claimed that before he got off the ladder which had used to climb to the top of the transformer he had hooked one of his lanyards to a one-inch pipe which he could reach with one hand while still maintaining three-point contact with the ladder. He testified that he had thereafter moved towards the centre of the transformer and had hooked his second lanyard to a lifting lugg on the top of the transformer prior to unhooking the first lanyard from the pipe.

9. Mr. Hill's evidence was that Mr. Green must have been mistaken about what he claimed to have seen and that he must have failed to notice that a lanyard was in fact hooked to the pipe when

he was standing on top of the transformer trying to locate the lifting lugg. Mr. Hill denied that he had ever told Mr. Moriarty that he had been on top of the transformer without being tied-off. He stated that any confusion about what he had said (or at least what he had meant) may have been as a result of the fact that when he was being interviewed about this incident he was under the impression that Mason's concern related to his use of the ladder and was not about whether he was tied-off when he got off the ladder. Mr. Hill claimed that he only found out he had been discharged for failing to be tied-off when he received his Record of Employment some two weeks after he had been discharged.

IS THE DISCHARGE *VOID AB INITIO*?

10. The Union takes the preliminary position that the manner in which Mason terminated Mr. Hill was in violation of Article 15 of the Collective Agreement. It asserts that the provisions of the Collective Agreement that the Employer failed to comply with are mandatory and substantive. Therefore, the Union argues that Mr. Hill's discharge is *void ab initio.*

11. In response, Mason asserts that the Union bears the onus with respect to this preliminary issue and that it failed to call sufficient evidence necessary to establish that the relevant provisions of the Collective Agreement were not complied with in relation to Mr. Hill's discharge. Further, Mason takes the position that the evidence which was called concerning this issue establishes that the Collective Agreement was in fact complied with in all respects. Finally, and in the alternative, Mason argues that the Collective Agreement provisions relied upon by the Union are procedural, rather than substantive, in nature. Therefore, it asserts that if they were not complied with the Board nevertheless has, and in the circumstances of this case should exercise, the discretion to cure any procedural defect which may have occurred.

The Collective Agreement

12. Article 15 of the Collective Agreement is as follows:

> 15.1 The Representative of the Local Union shall have access to the Project during working hours, but in no case shall his/her visits interfere with the progress of work. When visiting the Project he/she shall first report to the Employer Superintendent or other Supervisory Personnel of the Employer, in charge of the Project.
>
> 15.2 The Member Unions may appoint a Union Steward on the Project by informing the Employer in writing.
> No discrimination shall be shown against any Union Steward for carrying out his/her duties, but in no case shall his/her duties interfere with the progress of work.
>
> 15.3 The Union Steward shall be one of the last two (2) Employees retained by the Employer provided he/she is competent and capable of performing the remaining work. The Union Steward shall not be excluded from overtime work provided he is willing and capable of performing the available work.
>
> 15.4 The Employer shall notify the Member Union before a Steward is to be laid off or terminated.

The Sufficiency of the Evidence

13. The only evidence concerning the notification provided to the Union before Mr. Hill's discharge come from Mr. Moriarty. As noted above, he testified that prior to discharging Mr. Hill he (Moriarty) both requested that Mr. Rowell contact Mr. Wall and subsequently confirmed that Mr. Rowell had in fact done so. Mr. Moriarty's specific evidence concerning this matter was that Mr. Rowell told him that he had left a phone message for Mr. Wall in which he (Rowell) had said:

> *Peter, we have an issue with fall protection involving Mike Hill. Please call me back at the earliest convenience.*

14. The Employer argues that the Union has the onus of proving the facts necessary to establish its preliminary position concerning the failure to provide notice under Article 15.4. It takes the position that, on the basis of the evidence called, specifically the hearsay evidence provided by Mr. Moriarty concerning Mr. Rowell's message, the Union has failed to do this. With respect, I disagree.

15. I agree with the Employer's position that the Union bears the onus concerning this particular issue and that the evidence given by Mr. Moriarty about what Mr. Rowell had told the Union prior to the discharge (by way of the phone message to Mr. Wall) is hearsay in nature. However, I disagree with the Employer's assertion that this evidence can not be considered and relied upon.

16. An arbitrator, which I am in the context of this section 133 referral, has, by virtue of section 48(12)(f) of the Act, a very broad authority to determine what evidence will be submitted and considered. Accordingly, I have the discretion to accept and rely upon hearsay evidence. In these circumstances, I find that it is appropriate and proper to rely upon the evidence given by Mr. Moriarty concerning the contents of Mr. Rowell's message to Mr. Wall even though it is hearsay evidence.

17. In this hearing, Mason called all of its evidence, concerning both the preliminary issue and the merits of the grievance, first. Mr. Wall was present while Mr. Moriarty gave his evidence and was not thereafter called to give evidence himself. If the Union had sought to contest the evidence of Mr. Moriarty on this point it could have called Mr. Wall to give direct evidence concerning the phone message. The fact that it chose not to, along with not objecting to Mr. Moriarty's evidence concerning the message, clearly implies that the Union accepted as accurate Mr. Moriarty's evidence concerning the contents of the message. As the Union agreed with the version of events testified to by the Employer's witness, there was no need for it to call a witness to confirm that evidence, even if the Employer's evidence was hearsay in nature. In these circumstances, the contents of Mr. Rowell's phone message, as related by Mr. Moriarty, is essentially akin to a fact upon which both parties have agreed and accordingly the hearsay evidence of Mr. Moriarty concerning this message can be relied upon by both parties and the Board.

The Sufficiency of the Notice

18. Article 15.4 is completely silent concerning how the Union is to be notified prior to a lay-off or terminated. There is no requirement that the notice be provided in writing. Accordingly,

verbal notice, including the leaving a voice mail message, could be sufficient to fulfill the requirements of the Collective Agreement.

19. However, based on the only evidence which I have before me concerning what Mr. Rowell said in his message to Mr. Wall, I conclude that requirements of Article 15.4 were not met in this particular case. According to the Employer's Construction Manager, Mr. Rowell did not advise Mr. Wall that the Employer was considering any form of discipline yet alone that Mr. Hill was going to be discharged. If notice is to serve its purpose and be meaningful (as discussed in more detail hereinafter), particularly when it is given by way of a voice message, it must be direct and clear. Advising the Union that an issue involving fall protection and its steward had arisen is simply too vague and open to too many possible interpretations concerning, for example, what exactly the issue was, what the steward's involvement was and what the possible consequences for him might be, to meet the requirements of the Collective Agreement. Laying off or terminating a worker is a clear and definitive act and therefore, under the provisions of this Collective Agreement, the notification to the Union that this is what the Employer is considering should be equally clear and definitive.

The Consequences of the Failure to Comply with Article 15.4

20. These parties disagree as to the nature of the rights and entitlements established by Article 15.4 and accordingly disagree as to what the consequences of a failure to abide by the provisions of this Article should be. The Union asserts that this Article, at least in part, extends substantive rights to individual employees, namely the union stewards. The Employer asserts that the provisions of this Article only provide rights to the various signatory unions and that these rights are procedural in nature. Having considered the positions of both parties, I find that the Union's position is preferable.

21. It is true, as Mason asserts, that portions of Article 15 extend rights and entitlements to the unions that are parties to this Collective Agreement and do not provide any rights to any employees. However, it is equally true that certain portions of this Article provide substantive rights to the employees who have been appointed as the unions' stewards as opposed to their unions. For example, Article 15.3 very clearly provides *superseniority* to stewards with respect to lay offs and overtime opportunities. Accordingly, it is simply incorrect to view Article 15 as being exclusively concerned with the rights of the unions.

22. In analysing Article 15.4, one of its possible purposes may well be, as the Employer asserted, to insure that a union is aware that its steward has been laid off and terminated so as to allow it to take appropriate action, including appointing a new steward to represent it and its members on the jobsite. However, based on its wording, I do not conclude that this is the only purpose of this Article.

23. The notification which the Employer is required to provide under Article 15.4 must occur *before* the steward is to be laid off or terminated. This timing is significant in determining what the purpose of this Article is and therefore in determining the nature of the rights which it establishes. The most logical explanation for the timing of this notification is so that the relevant union at least has an opportunity to intervene with the Employer before the final step of laying off or terminating the steward is taken. As arbitrators have repeatedly held, it is far easier for a union to influence events before an employee has been terminated rather than seeking to have him or her returned to work after the termination has actually occurred. Further, the importance of such an opportunity for

prior intervention is particularly important with respect to stewards as the nature of their position often require them to put themselves in conflict with members of management and to take positions and actions with which the Employer disagrees. Accordingly, I find that Article 15.4 provides an important substantive right to the stewards in that under the provision of this Collective Agreement they have the right for their union to have an opportunity to try to protect them before they are actually laid off or terminated.

24. In this respect, the prior notification provisions of this Collective Agreement are similar to those dealt with in the cases relied upon by the Union. For example, in *Re Dupont Canada Inc.* (2003), 123 L.A.C. (4th) 158 (October 30, 2003), Arbitrator Leighton stated the following concerning prior notification to unions:

> Thus having carefully considered the submissions of the parties, I find that article 11 provides a mandatory requirement that notice be given to the union prior to a dismissal meeting. This is a substantive right and given that the evidence clearly establishes that no notice was given, the grievor's dismissal must be found to be null and void. There is thus no need to address the union's alternate grounds for the preliminary motions. It may be of assistance to the parties to indicate that after a careful review of the caselaw provided by them in this area, especially as to notice to the union after termination, these provisions are generally considered to be procedural and without evidence of prejudice would not result in a terminating being found null and void.

25. Further, in *Re Underwriters' Laboratories of Canada* (2000), 89 L.A.C. (4th) 66 (May 23, 2000), Arbitrator Gail Brent stated:

> **16** Article 5.02 is clear in mandating that notice must be given prior to the implementation of discipline. In Toronto Western Hospital at page 198 there is a discussion concerning the failure to comply with mandatory notice provisions. It has been held that the failure to comply with a mandatory notice provision is as fatal a flaw as a failure to allow union representation where mandated by the collective agreement. The collective agreement creates a mandatory obligation on the Company to provide advance notice of impending discipline to both the Union and the grievor. It is an important obligation because, among other things, it allows the Union to provide effective representation to it members and the employee to consider his/her position realistically in light of what may occur. Merely to be summoned to a meeting tells the Union and the employee nothing of substance which they would need to fully understand and assess the situation. The fact that the Union had notice at all was mere happenstance here. Further, there is no evidence before me from the Burkett award to suggest that the Company gave the grievor any notice, constructive or otherwise, that he could be disciplined or discharged as a result of the April 21st meeting.
>
> **17** It is therefore my conclusion that the Company failed to comply with the notice provisions of Article 5.02, that those provisions are mandatory and substantive in nature, and that as a result the discipline should be held to be void ab initio.

26. In addition, in this case the mandatory nature of the provisions of Article 15.4 is further confirmed by Article 7 – MANAGEMENT RIGHTS which states:

> 7.1 The Council and the signatory Unions to this Agreement acknowledge and agree that the Employer has the exclusive right to manage the Project and to exercise such right without restriction save and accept such rights as may be modified by the terms and conditions of this Agreement without restricting the generality of the foregoing paragraph, it is the exclusive right of the Employer;
>
> A) To determine qualifications, classify, transfer, hire, direct, promote, demote, lay-off, discipline and or discharge Employees for cause, in accordance with the terms of this Agreement.
> B) To determine the materials and methods to be used, design of the products to be handled, facilities and equipment required, the scheduling of the work.
> C) To determine reasonable rules arid regulations to be observed.
> D) To determine the number of shifts, the quality and standards, machinery and equipment, the number of Employees and the location of facilities and services.
>
> 7.2 It is agreed that none of the foregoing shall be exercised in a manner inconsistent with this Agreement.
>
> **[emphasis added]**

27. Although Mason clearly has the right to discharge Mr. Hill for cause it is only entitled to do so *in accordance with the terms of the agreement.* These obviously include the provision of Article 15.4 which the Employer failed to comply with in this case.

DISPOSITION

28. For the reasons noted above, I find that the Employer failed to provide notification to Local 303 prior to discharging its steward, Mr. Hill, as required by Article 15.4 of the Collective Agreement. I find that the provisions of this Article provide a substantive right to unions' stewards, such as Mr. Hill, which are mandatory in nature and that by discharging Mr. Hill in violation of these provisions Mason has also violated Articles 7.1 and 7.2 of the Collective Agreement. The discharge of March 17th is therefore *void ab initio* and Mr. Hill is hereby returned to his employment with Mason, with full compensation for any loss of wages and benefits which he has incurred.

29. Given my decision herein concerning the Union's preliminary argument, it is not necessary for me to consider the various positions which the parties took concerning the merits of this grievance.

30. I will remain seized of this matter should the parties require further assistance in implementing this award.

COURT PROCEEDINGS

0290-08-U; 0338-08-U (Court File No. 79/09) Dr. Peter A. Khaiter v. York University Faculty Association, York University and Ontario Labour Relations Board and Kelly Waddingham, Vice-Chair

Adjournment – Bias – Duty of Fair Representation – Judicial Review – Practice and Procedure – The applicant sought judicial review of a Board decision (and reconsideration) adjourning two DFR applications pending the outcome of a scheduled arbitration – The applicant also brought a motion to have all the respondents' facta dismissed for failing to comply with the timelines in the *Rules of Civil Procedure* – The Court dismissed the motion, finding that there was no prejudice to the applicant, and he had adequate time to prepare his case – On the merits, the Court found there was no basis for the applicant's allegation of an apprehension of bias: it was reasonable for the Board to assign the same Vice-Chair to cases involving similar facts and the same parties – The Board was reasonable in adjourning the matters before it and extending the time for filing of responses – Although none of the respondents raised the issue of prematurity, the Court ruled that it would have dismissed the application on that basis as well – Application dismissed

[*Board decision not reported*]

Superior Court of Justice (Divisional Court), Swinton, Low, Karakatsanis J.J., July 8, 2009

ENDORSEMENT

Overview

1. The applicant seeks judicial review of two decisions of the Ontario Labour Relations Board (the "Board") made by Vice-Chair Kelly Waddingham. The applicant seeks a variety of relief, including the quashing of the two decisions, damages and directions to the Board. The applicant also brought a motion, served a few days before this hearing, seeking relief that included damages, the removal of the licence of YUFA's counsel, and findings of professional misconduct against certain counsel.

Background

2. On April 22 and 24, 2008, the applicant filed two complaints of unfair representation against the York University Faculty Association ("YUFA"). YUFA and the employer, York University ("York"), requested that the time for submission of their replies be extended until the completion of an arbitration hearing scheduled June 23, 2008 to deal with the applicant's tenure and promotion grievance. On May 14, 2008, the Board adjourned the complaints *sine die* pending the outcome of the arbitration. The Board found that the unfair representation complaints, the applicant's seventh and eighth against YUFA, were premature.

3. The applicant sought reconsideration of the May 14 decision and made written submissions. On September 5, 2008, the Board dismissed the application for reconsideration (Record of Proceedings, Tab 2), finding that the allegations in the two complaints arose out of the

same facts and involved the same parties. The Board held that it was therefore reasonable to adjourn both pending the outcome of the grievance arbitration. The applicant's alleged new evidence was not relevant because it was not in relation to the adjournment, but rather was in relation to the merits of his complaints of unfair representation. Finally, the Board held that the applicant had submitted his position on any request for an extension of time in his May 5, 2008 letter to the Board. He had provided no basis to show that an extension was not appropriate.

The Motion

4. The applicant's motion was dismissed at the hearing of the application with reasons to follow.

5. The applicant was informed at the outset that this Court does not have jurisdiction to award damages or to deal with issues of professional misconduct on an application for judicial review of a Board decision.

6. The applicant argued that the respondents had failed to comply with rule 68.04(4), as they did not deliver their facta within 30 days of service of the application record and the applicant's factum. As well, they did not comply with the requirements for a factum as set out in rule 68.04(6). Therefore, he sought an order deeming admission of the factual allegations set out in his own factum, striking the facta or an adjournment of the application.

7. The applicant's record and factum were served by mail at the end of March 2009. Therefore, the respondents' facta should have been served by early May. YUFA served its factum on June 3, 2009, and the Board and York served theirs on June 17, 2009.

8. A failure to comply with the rules is an irregularity, and the court may grant may relief, on such terms as are just, to secure the just determination of the real matters in dispute (rule 2.01(1)(a)). While the respondents' facta were served late, we see no prejudice to the applicant. The Board, as usual, took no position on the merits and in its factum dealt only with the standard of review and the statutory duty of fair representation. York adopted the facts and arguments in YUFA's factum.

9. The applicant had almost a month to prepare for the hearing after receipt of YUFA's factum. This was adequate time for preparation as this is not a complicated case factually or legally. There was no need for an adjournment of this application to enable the applicant to have time to respond. Therefore, leave is granted to the respondents to file their facta late.

10. The applicant also takes issue with the respondents' failure to file a responding record. As YUFA and York relied on the Board's record of proceedings, there was no need for them to file a record.

11. The applicant argues that the respondents failed to comply with the factum requirements under the rules because they failed to state which facts set forth in his factum were accepted or disputed, and they failed to respond to each of his issues.

12. In our view, while the respondents' facta are technically not in compliance with the rule, there is a reasonable explanation for their format: the applicant is not a lawyer, and his factum is

not in compliance with the rule. YUFA structured its factum so as to be of assistance to the Court, especially in its recital of facts and its position on the legal issues relevant to this application. York essentially adopted that factum. The Board, as is usual, took no position on the merits.

13. Further, it is our view that YUFA's factum does not leave any doubt as to its position on the issues germane to the application. It is unnecessary for a responding party to engage with the applicant upon facts or issues that are not germane to the application. Therefore, we would not give the relief sought by the applicant, as no sanctions are warranted in these circumstances.

The Application

The Standard of Review

14. To the extent that the substance of the decision to adjourn the complaints is at issue, the standard of review is reasonableness (*Schuit Plastering & Stucco Inc. v. Ontario (Labour Relations Board)*, [2009] O.J. No. 2082 (Div. Ct.) (May 15, 2009)).

15. When breaches of the rules of natural justice or the duty of procedural fairness are alleged, there is no need for a standard of review analysis. The issue is whether the applicable duty of fairness has been met (*Kalin v. Ontario College of Teachers* (2005), 75 O.R. (3d) 523 (May 24, 2005) (Div. Ct.) at para. 9).

Procedural Fairness

16. The applicant alleges that there is a reasonable apprehension of bias because the Vice-Chair had rejected the other six complaints he had made in December 2007 alleging breach of the duty of fair representation, and he had also raised concerns about her impartiality during that process. He had also asked the Chair of the Board to replace her.

17. In our view, there is no basis for the allegation of reasonable apprehension of bias. The applicant has not satisfied us that a reasonable person, informed of all the circumstances and viewing the matter realistically and practically, would conclude that the Vice-Chair was likely to approach the determination of the requests for an extension of the time to file responding materials with a closed mind.

18. The Board was not obliged to respond to the applicant's request that another Vice-Chair be assigned to hear his complaints. A decision maker is not disqualified simply by virtue of a party having made negative allegations against her. Nor should a litigant be permitted to disqualify an adjudicator who has ruled against him simply by making complaints against her. Indeed, it was reasonable of the Board to assign the same adjudicator to cases involving similar facts and the same parties. The Board could reasonably conclude it would be inappropriate to grant the request for another decision-maker, thus allowing the applicant to "shop" for an adjudicator.

19. The applicant also submits that the Board failed to provide adequate reasons for its decisions. We reject this submission. The Board clearly concluded that the new complaints were premature, given the referral of the tenure and promotion grievance to arbitration. Moreover, YUFA had filed the six grievances that were the subject of the eighth complaint.

20. The applicant argued that he was not given an opportunity to make submissions on the request for an adjournment. However, he had sent a letter to the Board dated May 5, 2008 expressly opposing extensions of time to the respondents. He received copies of the May 6 and 7 letters from YUFA and York requesting the extension. The Board was aware of his opposition to the extension, as is clear from the reasons in the reconsideration decision.

21. While the Board adjourned the second complaint prior to the May 22 request to do so, the decision was a reasonable one, as set out below. The Board was aware of the applicant's opposition, as explained in the reconsideration decision. Therefore, in our view, there was no denial of procedural fairness, as the applicant's position was before the Board and was considered.

22. The Board did not order the consolidation of the two complaints, as the applicant alleges.

The Reasonableness of the Decision

23. The applicant argues that the Board breached its rules in granting the adjournment and extension of time. Pursuant to Board rule 38.3, the Board has full discretion to adjourn a case if it considers it consistent with the Act, and by rule 3.2, it can extend time periods.

24. The Board's exercise of its discretion to extend the time and to grant an adjournment was reasonable, given the prematurity of the complaints. It was reasonable to adjourn both complaints, given there was overlap in the two complaints and their significant focus on the tenure and promotion dispute, which was on its way to a scheduled arbitration hearing.

Conclusion

25. As there has been no denial of procedural fairness and as the decision of the Board was reasonable, this application for judicial review is dismissed.

26. None of the respondents raised the issue of the prematurity of this application for judicial review. This Court has often said that it is undesirable to interrupt the course of administrative proceedings by an application for judicial review brought during the course of the proceedings, absent exceptional circumstances (*Ontario College of Art v. Ontario (Human Rights Commission)* (1993), 11 O.R. (3d) 798 (Div. Ct.) at paras. 5-7). It is preferable to avoid fragmentation of the tribunal's proceedings and to have judicial review on the basis of a complete record, so that the Court is able to determine the full impact of any potential error.

27. There are no exceptional circumstances here which justify judicial review during the course of the Board's proceedings. The Board has made no determination of the merits of the two complaints. All that it has done is to adjourn them pending the outcome of the arbitration process. Therefore, we would also have exercised our discretion to dismiss this application on the grounds of prematurity.

28. The Board does not seek costs. The respondents YUFA and York may make written submissions, through the Divisional Court Office, within 21 days of the release of this decision. The applicant shall make responding submissions within 21 days of the receipt of their submissions. All costs submissions are limited to five pages in length.

1531-06-PS (Court File No. 08-DV-1394) The Ottawa Fertility Centre Inc. –and- Ontario Nurses' Association, Ontario Public Employees Local 4000, The Ottawa Hospital and Ontario Labour Relations Board

Judicial Review – *Public Sector Labour Relations Transition Act* – ONA brought an application for a declaration that a "health services integration" under the PSLRTA had occurred – A fertility treatment clinic (OFC) operated pursuant to a contractual arrangement with the Ottawa Hospital whereby the hospital provided support staff, equipment, laboratory space and facilities – When OFC was moved to new premises, the employees who followed were only offered employment on the basis that they were new employees; OFC did not recognize the bargaining rights that existed in the Hospital setting – The Board held that a health services integration had occurred and exercised its discretion to declare that the PSLRTA applied to the integration – On Judicial Review the court found that the Board properly determined that the OFC was an "employer" who met the definition of "health services integration" under s. 2 of the PSLRTA – The court found OFC's argument that s. 2(b) only applies to employers who provide non health care services to the health services sector to be contrary to the plain reading of the section which states that it applies to an employer whose primary function is the provision of services within the health services sector – Additionally, there was ample evidence to suggest that there had been a health services integration (dissolution, transfer, continuance and discontinuance of services provided by the OFC as a result of its move from the hospital) – Finally, the court found the Board's decision to exercise its discretion by applying the *Act* to the integration consistent with the purposes of the *Act* – Accordingly, the Board's decision was within a range of acceptable and rational outcomes – Application dismissed

Board decision reported at [2008] OLRB Rep. January/February 86

Superior Court of Justice (Divisional Court), Leitch, Metivier and Hambly, JJ., August 5, 2009

INTRODUCTION

1. This is an application for judicial review of a decision of the Ontario Labour Relations Board (thc Board) dated January 10, 2008 under the Public Sector Labour Relations Transition Act, 1997 S.O., 1997, c. 13 (the Act).

Overview

2. The Ottawa Hospital (the Hospital) provided both insured and uninsured reproductive set-vices from 1988 through the Ottawa Hospital Fertility Clinic (OHFC). The Hospital did not employ the doctors who worked there. It did employ the nurses and other support staff who worked at the OHFC. The employment relationship of the staff who worked at the OHFC was governed by collective agreements with the Hospital negotiated on their behalf by the Ontario Nurses'

Association (ONA), by the Ontario Public Service Employees Union (OPSEU) and the Canadian Union of Public Employees (CUPE). The OHFC used the space and equipment provided to it by the Hospital. The doctors paid the Hospital 50% of the revenue that they received from the provision of uninsured services.

3. In 1988 the doctors incorporated The Ottawa Fertility Centre Inc. (OFC).

4. In the Fall of 2005 the OFC announced that it would move out of the Hospital into rented space at another location. The doctors hired staff to work at their new location. The OFC and the Hospital entered into an agreement that the Hospital would supply to the OFC documents and laboratory and human material that was relevant to ongoing care of patients. The OFC purchased equipment from the Hospital.

5. The OFC moved out of the Hospital on May 31, 2006. The Hospital terminated its employment relationship with the nurses and other staff who had worked at the OHFC. Some of the nurses and staff took employment with the OFC at its new location after they terminated their relationship with the Hospital. They were hired by the OFC at lower wages and with fewer benefits than they had had with the Hospital. The Board found in its decision that of the 52 employees of the OFC, 21 were former employees of the Hospital.

6. After the OFC opened in its new location, the Hospital did not provide reproductive services. In August 2006 the ONA brought an application before the OLRB for a declaration that a health services integration had taken place within the meaning of the Act and for an order that the Act applied to the integration. This would have the effect of requiring the OFC to recognize the ONA, CUPE and OPSEU as being bargaining agents for former employees of the Hospital whom they had hired from the Hospital to work at their new location and for employees whom they had hired to replace employees of the Hospital who had worked at the OFC. It would also require the OFC to comply with the collective agreements which had been in place with the Hospital for such employees.

7. The Board declared that a health services integration had taken place and exercised its discretion to order that the Act applied to the integration.

The Legislation

8. The Act was passed in 1997 to regulate labour relations and collective bargaining consequences flowing from restructuring in the public sector. It replaced the successor rights scheme under s. 69 of the Labour Relations Act, S.O. 1995, c. 1. Its purposes are as set out in s. 1 as follows:

> 1. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.
> 2. To facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations.
> 3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.

> 4. To foster the prompt resolution of workplace disputes arising from restructuring. 1997, c. 21, Sched. B, s. 1.

9. When the Local Health System Integration Act, 2006, S.O. 2006, c. 4. was enacted, the Act was amended to include the following definition of a "health services integration" in s. 2:

> 2. In this Act,
>
> ...
>
> "health services integration" means an integration that affects the structure or existence of one or more employers or that affects the provision of programs, services or functions by the employees, including but not limited to an integration that involves a dissolution, amalgamation, division, rationalization, consolidation, transfer, merger, commencement or discontinuance, where every employer subject to the integration is either,
>
> (a) a health service provider within the meaning of the Local Health System Integration Act, 2006, or
>
> (b) an employer whose primary function is or, immediately following the integration, will be the provision of services within or to the health services section; ("integration des services de santé")

10. The general scheme of the Act was concisely described by the ONA in paragraph 56 of its factum as follows:

> 56. The general scheme of PSLRTA is to provide for a detailed three phase transitional process to determine bargaining and other rights following restructuring. The first phase preserves, on an interim basis, the status quo for affected employees in relation to bargaining rights and the terms and conditions of employment. In the second phase the bargaining unit(s) and rights appropriate to the successor employer are determined, either by agreement or Board order (including procedures for employee voting in appropriate cases). In the third and final phase, if the successor employer remains unionized, a new collective agreement is reached between the ultimate bargaining agent(s) and successor employer.

11. As noted by the Board, in paragraph 7 of its factum, the Board "has been given exclusive jurisdiction to consider and interpret the various configurations and relationships that arise from public sector amalgamations or mergers of employers or bargaining agents, to identify successor employers and fashion new bargaining arrangements as necessary." s. 37(1), (9) and s. 114(1) and 116 of the Labour Relations Act, 1995.

12. When a restructuring occurs in the public health sector, the question of whether the Act applies is determined by an application under s. 9 of the Act which provides as follows:

> 9.1(1) An employer that is or will be subject to a health services integration or a bargaining agent that represents employees of such an employer may request the Board to make an order declaring that this Act applies to the health services integration in question. 2006, c. 4, s. 42(4).

> Board Order
> (2) The Board may by order declare that this Act applies to a health services integration if requested to do so under subsection (1). 2006, c. 4, s. 42(4).
>
> Factors to consider
> (3) When deciding whether to make an order under this section, the Board shall consider the following factors and such other matters as it considers relevant:
> 1. The scope of agreements under which services, programs or functions are or will be shared by employers subject to health services integration.
> 2. The extent to which employers subject to the health services integration have rationalized or will rationalize the provision of services, programs or functions.
> 3. The extent to which programs, services or functions have been or will be transferred among employees subject to the health services integration.
> 4. The extent of labour relations problems that have resulted or could result from the health services integration. 2006, c. 4, s. 42(4).
> Order-timing and terms
> (4) The Board may make an order,
> (a) before or after the health services integration in question occurs; and
> (b) on such terms as it considers appropriate. 2006, c. 4, s. 42(4)

The Decision Under Review

13. The issues before the Board were, whether a health services integration had occurred and, if it had, whether the Board should exercise its discretion and declare that the Act applied to the integration. For there to be an integration it was necessary that the Hospital and the OFC satisfy the description of employer in the definition of health services integration. The OFC conceded that the Hospital was an employer described in section 2(a) of the Act. The Board held that the OFC satisfied the definition of employer in section 2(b). It stated the following:

> 24. I conclude that the events described, and the parties, meet the definition of a "health services integration" within the meaning of section 2 of the PSLRTA. First, it is agreed that the Ottawa Hospital meets the definition in subsection 2(a). I find that The Ottawa Fertility Centre Inc. meets the definition in subsection 2(b). With respect, there is no reason to interpret subsection 2(b) as applying only to a subsidiary or secondary health service support such as laundry and food service functions. The Legislature could have chosen narrow or particular language to achieve that result if it wanted. Instead, it chose language that is capable of capturing a range of employers in the health care sector, who may not be health care providers as that term is defined in the Local Health System Integration Act, 2006, but whose primary function is to provide health care services within or to the health care sector. It seems to me that The Ottawa Fertility Centre Inc. neatly meets that definition. It is an employer. It only provides services within the health care sector, in this case, assisted reproductive services.

14. In paragraphs 7 and 33, the Board found that the OFC had been "an integrated component of the Hospital". The Board held that there had been a health services integration between the two employers. It found that number 3 of the factors set out in section 9(3) of the Act applied. It stated the following:

> 30. Section 9(3) of the PSLRTA sets out the factors the Board should consider in deciding whether or not to exercise discretion:
>
> When deciding whether to make an order under this section, the Board shall consider the following factors and such other matters as it considers relevant:
>
> 1. The scope of agreements under which services, programs or functions are or will be shred by employers subject to the health services integration.
>
> 2. The extent to which employers subject to the health services integration have rationalized or will rationalize the provision of services, programs or functions.
>
> 3. The extent to which programs, services or functions have been or will be transferred among employers subject to the health services integration.
>
> 4. The extent of labour relations problems that have resulted or could result from the health services integration.
>
> It is common ground that there are no agreements under which services, programs or functions will be shared. All assisted fertility treatments will be provided by The Ottawa Fertility Centre Inc All the equipment, doctors, patients, embryos, sperm and much of the paraprofessional and support staff have become employed by The Ottawa Fertility Centre Inc. As the unions pointed out, employees of the Ottawa Hospital with expertise in assisted reproductive treatment will not be able to work in that field unless they leave the Ottawa Hospital. So, to the extent that the third point asks the Board to consider whether the health services integration involves dislocation of employees from one employer to another, yes, that is a factor in this case.

15. With respect to labour relations problems that have resulted from the health services integration as referred to in number 4 of the factors in section 9(3) it stated the following:

> ...
> 31. In response to The Ottawa Fertility Centre Inc.'s assertion that there have been no labour relations consequences as a result of the closure of the Hospital clinic, and the opening of The Ottawa Fertility Centre Inc., the unions retort that there have been no problems because The Ottawa Fertility Centre Inc. has completely ignored the collective agreements and treated the employees as new hires in a non-union setting. From the unions' point of view, that is a very serious labour relations problem that has resulted from this health services integration.

> They note that the Board has previously determined that even the possibility that a new employer would fail to recognize a union's bargaining rights after a health care restructuring was a serious labour relations problem (see *Children's Hospital of Eastern Ontario*, [2004] OLRB Rep. May/June 519 (May 20, 2004), at paragraph 39).
>
> 32. Without oversimplifying the case, that really is the nub of the issue. Should The Ottawa Fertility Centre Inc. operate without any regard to its roots in a division of a public hospital, with a sophisticated labour relations infrastructure, and acquired rights and obligations under long-standing collective agreements? I think the answer is no. The PSLRTA was designed to provide mechanisms to manage the labour relations consequences of the changes in the delivery of health care as they arise in a wide range of contexts.

16. With respect to the exercise of its discretion to declare that the Act applied to the health services integration it stated the following:

> 33. It is not accurate to characterize the movement of the clinic from the Hospital to The Ottawa Fertility Centre Inc. as merely a set of doctors closing up shop in one location, and moving to another. As set out in paragraph 7, the clinic at the Ottawa Hospital was an integrated component of the Hospital, whose loss was anticipated to affect the delivery of women's health care; education opportunities for physicians, nurses and technicians; the Hospital's accreditation as a teaching hospital: and research excellence. The move had a significant impact on people, patients, existing staff and future professionals.
>
> 34. The PSLRTA was designed specifically to address the impact of such changes on the employment of existing staff, union bargaining rights and the web of collective agreements that arise from such relationships. As the Board noted in Central Care Corporation, (Board Files 4294-05-PS and 0160-06-PS, July 31, 2007), because the PSLRTA makes clear that sale of business provisions in the Labour Relations Act, 1995, do not apply to health services integration, there is no other statutory mechanism "... under which these types of changes can be managed in an orderly and predictable fashion" (paragraph 69). From a labour relations policy perspective, it is preferable to find a structure wider which to manage the changes. In the absence of a very clear case that application of the Board's discretion would be inappropriate, the PSLRTA should apply.
>
> 35. The unions have asked the Board to simply make a declaration at this point. Having regard to the factors set out in section (9X3) of the PSLRTA, and in particular, a consideration of the labour relations problems arising out of this health services integration, I declare that the PSLRTA applies to the integration.

Position of the Parties

17. OFC submits that the Board's decision that a health services integration had occurred should be reviewed according to a standard of correctness. While the OFC acknowledged the Board

has expertise with respect to labour relations, it submitted that expertise does not extend to the question of whether the Act applies to this restructuring.

18. The OFC submits that the Board erred in law in finding that it was an employer described in the definition of health services integration under the Act and in its finding that such an integration had occurred and that the standard of review of this part of its decision is correctness. Assuming that its decision that the OFC was an employer and that a health services integration had taken place is correct, it submits that the Board erred in law and was incorrect, or in the alternative it made an unreasonable decision in exercising its discretion to declare that the Act applied.

19. The OFC submits that the meaning given to section 2(b) of the Act by the Board would capture the Hospital as well as the OFC. This means that there would be no need for section 2(a). Therefore, section 2(b) must be given a narrow meaning which would capture only employers that provide non health care support and/or services to the health services sector, such as laundry and food service suppliers.

20. Further, it submits that assuming the OFC is an employer described in s. 2, the Board erred in finding that a health services integration had occurred. The OFC submits that while it was at the Hospital it paid the Hospital a fee for the equipment, space and facilities that the Hospital provided to it and that it provided a service for patients of the Hospital. In oral submissions it drew an analogy to a lawyer who shared space with a law firm and used some of its equipment for a fee paid as part of his rent and maintained an independent practice. When it moved out, there was no transfer of employees or services and the move created no labour problems. None of the factors set out in the definition of health service integration applied. There was no integration. It was simply a severance of a relationship.

21. Finally, assuming the Board was correct in finding that there was a health services integration, the OFC submits that the Board erred, or in the alternative, made an unreasonable decision in exercising its discretion to apply the Act to the health services integration. It states that none of the factors in section 9(3) apply. The OFC hired new employees, albeit some of the former employees of the hospital who had worked at the OFC when it was located at the hospital. There were no labour relations problems that resulted or could result from the health services integration.

22. The ONA, CUPE and OPSEU and the Board submits that the standard of review that the Divisional Court should apply to the decision of the Board is reasonableness. This was the standard of review that the court had applied to the judicial review of Board decisions before the Supreme Court of Canada released the decision of Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190, and it was mandated by Dunsmuir. The ONA, CUPE and OPSEU submit that given that the standard of review is reasonableness, there was nothing unreasonable about the Board's decision, as that term has been defined by Dunsmuir.

Analysis and Disposition Standard of Review

23. Prior to the release by the Supreme Court of Canada of its decision in Dunsmuir, there were three standards of review that a court could apply to review the decision of an administrative Board. A court would give increasing deference to the decision of the Board depending upon whether it applied a standard of correctness, reasonableness or patent unreasonableness. Dunsmuir

decided that there were only two standards of review, namely, correctness and reasonableness. In the majority judgment of Justice Bastarache, the Supreme Court held as follows:

> 45. We therefore conclude that the two variants of reasonableness review should be collapsed into a single form of "reasonableness" review. The result is a system of judicial review comprising two standards correctness and reasonableness. But the revised system cannot be expected to be simpler and more workable unless the concepts it employs are clearly defined.
>
> 46 What does this revised reasonableness standard mean? Reasonableness is one of the most widely used and yet most complex legal concepts. In any area of the law we turn our attention to, we find ourselves dealing with the reasonable, reasonableness or rationality. But what is a reasonable decision? How are reviewing courts to identify an unreasonable decision in the context of administrative law and, especially, of judicial review?
>
> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. hi judicial review, reasonableness is concerned mostly with the existence of [page 221] justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

24. The Supreme Court of Canada held that there is a two-step procedure to be applied by a court in undertaking a judicial review of an administrative board described as follows:

> . . .
> 62. In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

25. Following that process, the first question is whether the standard has already been decided for the review of a decision of the Board.

26. It is clear from prior case law that the Board is entitled to a high degree of deference when it interprets the Labour Relations Act. In Maystar General Contractors Inc. v. International Union of Painters and Allied Trades, Local 1819 (2008), 90 O.R. (3d) 451 (Ont. C.A.), the Ontario Labour Relations Board had refused to allow an extension of time to an employer to file a response

to an application by a union for certification. In reviewing the decision, the Divisional Court applied a standard of review of correctness and set aside the decision. The employer appealed to the Ontario Court of Appeal. By the time that the appeal was heard, the Ontario Labour Relations Board had applied the decision of the Divisional Court and had rescinded the certification order. The Court of Appeal held that the appeal was moot. However, in the decision of Justice Gillese, the court held the following:

> [42] I conclude, however, with the following caution. Nothing in these reasons should be taken as affirming the Divisional Court's view that the appropriate standard of review of the Board Decision was correctness and that no deference was owed to the Board in its interpretation of the relevant certification provisions in the LRA. The decisions of the Supreme Court of Canada, over the course of many decades, show an unbroken commitment to affording labour relations boards the highest levels of judicial deference on matters within their exclusive jurisdiction. See, for example, Canadian Union of Public Employees Local 963 v. New Brunswick Liquor Corp., [1979] 2 S.C.R. 227, [1979] S.C.J. No. 45, Canada (Attorney General) v. Public Service Alliance of Canada, [1993] 1 S.C.R. 941, [1993] S.C.J. No. 35 and Royal Oak Mines Inc. v. Canada (Labour Relations Board), [1996] 1 S.C.R. 369, [1996] S.C.J. No. 14. 24 Issues which arise in implementing the LRA provisions governing the certification process in the construction industry are such matters.
>
> [43] In the nomenclature of old, Board decisions were not to be set aside unless they were patently unreasonable or clearly irrational. Dunsmuir v. New Brunswick, [2008] S.C.J. No. 9, 2008 SCC 9, has simplified the standard of review analysis with the result that there are now only two standards of review: correctness and reasonableness. However, both the result and the reasoning in Dunsmuir affirm a continuing stance of deference in the field of labour relations. In Dunsmuir, a standard of reasonableness was held to apply when reviewing the decision of an adjudicator made under the Public Service Labour Relations Act, R.S.N.B. 1973, c. P-25. The majority in Dunsmuir notes that an exhaustive analysis is not required in every case to determine the proper standard of review: if the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded a decision maker with regard to a particular category of question, the search for the appropriate standard is over. If not, then the usual factors are to be considered. Deference will "usually result" where a decision maker is interpreting its own [page 462] statute, with which it will have particular familiarity. Deference is also warranted where the decision maker has particular expertise in the application of legal rules in a specific statutory context. The majority also noted that a question of law of central importance to the legal system as a whole and which is outside the specialized area of expertise of the decision maker will always attract a correctness standard. I do not see the Procedural Issue as raising a question of that nature.

27. We are of the view that the case law has established that the standard of review is reasonableness.

28. However, even if we were not satisfied that the standard of review had been established in prior case law, and were obliged to proceed with the second step in the Dunsmuir analysis to determine the appropriate standard of review by the pragmatic and functional approach, we are of the view that based on that approach, the standard of review is reasonableness considering the factors described in Dunsmuir -- the existence of a privative clause, the expertise of the decision-maker, the purpose of the Act, and the nature of the problems to be determined.

29. We agree with the OLRB that the key question is whether a "health services integration" occurred which requires an interpretation of the Act and engages key concepts of labour employment relationships.

30. In addition, in a case where the Act was found to be an external statute rather than a home statute, the standard of review was found to be patent on reasonableness (which post Dunsmuir has been subsumed in the standard of reasonableness (see *Ottawa-Carleton Public Employees Union, Local 503 v. Ottawa (City) Transition Board* [2004] O.J. No. 1508 (April 14, 2004) (Div. Ct.).

31. Further, in another pre-Dunsmuir decision, the court held that a high degree of deference was due to the OLRB in interpreting the Act (see *Greater Essex County District School Board v. International Brotherhood of Electrical Workers, Local 773* (2007), 83 O.R. (3d) 601 (Div. Ct.), application for leave to appeal to the Ontario Court of Appeal dismissed May 23, 2007, application for leave to appeal to the Supreme Court of Canada dismissed [2007] S.C.C.A. No. 384) (November 15, 2007).

32. Finally, our conclusion is consistent with a post-Dunsmuir decision, *Horochowski v. Ontario English Catholic Teachers Assn.* (Div Ct.) [2008] O.J. No. 4287 (October 27, 2008) (Ont. Div. Ct.) in which the court concluded at para. 12:

> Previous case law determined that the Board's decisions were subject to a standard of patent unreasonableness. In the recent case of Dunsmuir v. New Brunswick, [2008] S.C.J. No. 9, the Supreme Court re-examined the concept of standard of review, and determined there are only two standards: correctness and reasonableness. The previous standard of patent unreasonableness was collapsed within the "reasonableness" standard. Dunsmuir also held that once a standard of review had been established in the jurisprudence, it was not necessary to do an exhaustive analysis. We are therefore satisfied that reasonableness is the appropriate standard of review with respect to the merits of the decision.

33. In applying the Act, the OLRB is interpreting a home statute in the field of labour relations which is its expertise. Its purpose is to resolve labour disputes arising out of the restructuring of municipalities, school boards, hospitals and other public sector employers. The nature of the question before it was whether or not there had been a health services integration between two entities and if there had, whether the Act should apply. The question of who is an employer is within the expertise of the Board. These factors all suggest deference to be given to the decision of the Board and a standard of review of reasonableness.

34. We find that the standard of review of the Board's decision is reasonableness and this standard applies both to a review of how the Board interpreted and applied s. 2 of the Act and to a review of the exercise of its discretion under s. 9 of the Act.

Was the Board's Decision Reasonable?

35. We agree with the respondents that the decision of the Board is reasonable as that term is defined in Dunsmuir and at a minimum it falls "within a range of possible acceptable outcomes which are defensible in respect of the facts and law". The OFC argues that the definition of employer under section 2(b) only applies to employers who provide non health care services to the health services sector, such as laundry or food services. This is contrary to a plain reading of the section and ignores that part of the definition which states that it applies to an employer whose primary function is the provision of services within the health services sector, In arguing that there was not a health services integration by way of an analogy to the lawyer with an independent law practice sharing space with a law firm who decides to move, the OFC ignores the finding of fact of the Board that the OFC was an "integrated component of the hospital". The OFC did not challenge the findings of fact by the Board, nor could it because they were well supported by the evidence. There was ample evidence to support the proposition that there was a dissolution, transfer, continuance and discontinuance of services provided by the OFC as a result of its move out of the hospital as set out in the definition of health services transition in the Act. The Board's decision to exercise its discretion by applying the Act to the integration is entirely consistent with its purpose.

Conclusion

36. The application is dismissed.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JUNE 2009

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

3181-06-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Applicant) v. Precision Concrete Ltd. (Respondent)

Unit: "all construction labourers in the employ of Precision Concrete Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non- working foreman" (3 employees in unit)

3514-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. James Conci Holdings Ltd. (Respondent) v. Attorney General of Ontario (Intervener)

Unit: "all construction labourers in the employ of James Conci Holdings Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of James Conci Holdings Ltd. in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1229-08-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Cornerstone Structural Restoration Inc. (Respondent)

Unit: "all cement masons and cement mason apprentices and masonry restoration employees, including restoration steeplejack journeymen and apprentices, groundmen and waterproofers, in the employ of Cornerstone Structural Restoration Inc. in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

3107-08-R: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. R.O.M Contractors Limited and/or, R.O.M. Contractors Inc. and/or, Ross Clair Contractors (Respondents)

Unit: "all construction labourers in the employ of R.O.M. Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the R.O.M. Construction Inc. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel andYork, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the Towns of Ajax and Pickering, the Regional Municipality of Durham, the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, the County of Lennox and Addington, the County of Frontenac and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

0540-09-R: Construction Workers Local 6 affiliated with the Christian Labour Association of Canada (Applicant) v. Horizon Concrete Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of Horizon Concrete Construction Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit)

0626-09-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. PAJE Contracting a Division of 2047898 Ontario Inc. (Respondent)

Unit: "all marble, tile, terrazzo and cement masons and their respective helpers, apprentices, improvers and all construction labourers in the employ of PAJE Contracting a Division of 2047898 Ontario Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

0820-09-R: Labourers' International Union of North America, Local 625 (Applicant) v. Petro Cement Work (Respondent)

Unit: "all construction labourers in the employ of Petro Cement Work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Petro Cement Work in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0451-09-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Yonge Street Hotels c.o.b. as Courtyard by Marriott Downtown Toronto (Respondent)

Unit: "all security employees of Yonge Street Hotels c.o.b. as Courtyard by Marriott Downtown Toronto in the city of Toronto, Ontario, save and except supervisors and persons above the rank of supervisor" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

0536-09-R: Canadian Union of Public Employees (Applicant) v. Riverstone Oakpark Inc. o/a Oakpark Retirement Community (Respondent)

Unit: "all employees employed at Oakpark Retirement Community, save and except Registered Nurses, supervisors and persons above the rank of supervisors" (42 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	24

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

0562-09-R: The Canadian Union of Public Employees (Applicant) v. Treetop Children's Centre (Respondent)

Unit: "All employees employed by Treetop Children's Center in the City of Toronto save and except supervisors and person above the rank of supervisor and casual employees employed less than one month." (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0563-09-R: Teamsters Local Union No. 879 (Applicant) v. CNN Staffing Solutions Inc. (Respondent)

Unit: "all employees of CNN Staffing Solutions Inc. working at or out of the yard at 2025 Fruitbelt Dr., Niagara Falls, ON, save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff, and dispatchers" (52 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	65
Number of persons who cast ballots	45
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

0569-09-R: Ontario Public Service Employees Union (Applicant) v. The Hôpital régional de Sudbury Regional Hospital c.o.b. as Sudbury Vascular Laboratory Ltd. (Respondent)

Unit: "all employees of Sudbury Vascular Laboratory Limited in the City of Greater Sudbury save and except Technical Director and persons above the rank of Technical Director" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13

Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

0577-09-R: Canadian Union of Public Employees (Applicant) v. The Canadian Red Cross Society (Respondent)

Unit: "all Canadian Red Cross employees employed as drivers in the Mississauga/Halton Integrated branch save and except supervisors and persons above the rank of supervisor. Geographic Areas: Peel, Oakville, Milton" (40 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	44
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	0

0582-09-R: Canadian Union of Public Employees (Applicant) v.The Corporation of the Town of Penetanguishene (Respondent)

Unit: "all employees employed in the Public Works Department by The Corporation of the Town of Penetanguishene, Ontario, save and except supervisors and persons above the rank of supervisor, office, clerical and technical staff, professional engineers employed in an engineering capacity, students employed during the school vacation period, students or other persons employed as part of a co-operative education program, internship or other temporary work placement" (15 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

0616-09-R: Labourers' International Union of North America, Local 506 (Applicant) v. Hurley Corporation (Respondent)

Unit: "all employees of Hurley Corporation employed at and out of the Metropolitan Toronto Convention Centre in the City of Toronto, save and except sales, office and clerical staff, supervisors and persons above the rank of supervisor" (16 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0694-09-R: United Food and Commercial Workers International Union, (UFCW Canada)(Applicant) v. Newcamco Inc. o/a Best Western Cambridge Hotel & Conference Centre (Respondent)

Unit: "all employees employed by Newcamco Inc. o/a Best Western Cambridge Hotel & Conference Centre located at 730 Hespler Rd Cambridge Ontario, save and except Managers and those above the rank of Manager, sales, accounting and students" (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

0818-09-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. L & A Ltd. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

0296-07-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Looby Construction Limited; L.J. Looby Contracting Ltd.; Looby Builders (Dublin) Ltd. (Respondent)

Unit: "all construction labourers in the employ of the responding party in all other sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, save and except non-working foremen and persons above the rank of non- working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

2534-07-R: Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. Drewlo Construction Limited and 832958 Ontario Inc. (Respondent)

Unit: (see Bargaining Agents Certified subsequent to vote)

3740-08-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 880 (Applicant) v. Windsor Disposal Service Ltd. (Respondent)

Unit: "all employees of Windsor Disposal Services Limited who work at its premises on or adjacent to the Essex Windsor Recycling Centre at 3560/3580 North Service Road East, in Windsor, Ontario, save and except supervisors, those above the rank of supervisors, office and clerical employees and skilled trades employees, which term does not include operators or balers." (38 employees in unit)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	7

0407-09-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Sun Opta Inc. (Respondent)

Unit: "All employees of Sun Opta Inc., in the city of Vaughan, save and except supervisors, and persons above the rank of supervisor, office staff, sales and students employed for the summer vacation." (36 employees in unit)

Number of names of persons on revised voters' list	53
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	43
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	34
Number of ballots segregated and not counted	6

0534-09-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Alliance One Ltd. (Respondent)

Unit: "all employees of Alliance One Ltd. in the City of Toronto, save and except supervisors and those above the rank of supervisor" (93 employees in unit)

Number of names of persons on revised voters' list	93
Number of persons who cast ballots	84
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	77
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	31
Number of ballots marked against applicant	52
Number of ballots segregated and not counted	1

Applications for Certification Withdrawn

2995-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Across Canada Construction and Paving Limited (Respondent)

3557-07-R: International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. V.K. Mason Construction Co. (Respondent) v. Lincoln, Welland, Haldimand Building and Construction Trades Council, Brick and Allied Craft Union of Canada, Local 4/Marble Tile and Terrazzo Workers, International Association of Bridge, Structural and Ornamental Iron Workers, Local 736, International Brotherhood of Electrical Workers, Local Union 303, International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128, International Union of Operating Engineers, Local 793, Labourers' International Union of North America, Local 837, Ontario Building and Construction Trades Council, International Brotherhood of Painters and Allied Trades, Local 205, International Brotherhood of Painters and Allied Trades, Local 1795 (Glaziers), International Union of Elevator Constructors, Local 90, Operative Plasterers' and Cement Masons International Association of the United States and Canada, Local 598, Sheet Metal Workers International Association, Local 537, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787, Refrigeration Workers, United Association of Journeymen and Apprentices of the Pipefitting Industry of the United States and Canada, Local 666, United Association of Journeymen and Apprentices of the Pipefitting Industry of the United States and Canada, Local 853 (Sprinkler), United Brotherhood of Carpenters and Joiners of America, Local 1007 (Millwrights), United Brotherhood of Carpenters and Joiners of America, Local 18, The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario, Mechanical Contractors Association Ontario (Interveners)

1249-08-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Cornerstone Structural Restoration Inc. (Respondent)

1860-08-R: Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Redbern Homes, The Hedbern Development Corp. (Respondent)

2249-08-R: International Brotherhood of Electrical Workers, Local 303 (Applicant) v. AZZ Blenkhorn & Sawle Limited (Respondent)

3276-08-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Perras Mechanical Services Ltd. (Respondent)

0486-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Peter B. Edmonson Enterprises Limited c.o.b. Canadian Tire (Respondent)

0661-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Triaxis Construction Limited (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

0847-08-R: Canadian Union of Public Employees and its Local 870 (Applicant) v. The Perley Rideau Veterans' Health Centre (Respondent) (Withdrawn)

1130-07-R: Iron Workers District Council of Ontario (Applicant) v. Emile Janveaux Forest Products Ltd., G & P Welding & Iron Works Ltd. (Respondents) (Withdrawn)

2162-07-R: The Society of Energy Professionals (Applicant) v. Kinectrics Inc. and Kinects Solutions Inc. (Respondents) (Withdrawn)

1431-08-R: Universal Workers Union Labourers' International Union of North America, Local 183 (Applicant) v. J.P.K. Contracting Ltd. and, Regina Construction Limited (Respondents) (Withdrawn)

3102-08-R: Labourers' International Union of North America, Local 1059 (Applicant) v. 687908 Ontario Inc. o/a Miracle Construction Limited, 2166708 Ontario Inc. o/a Amico Infrastructures (Miracle) Inc. and/or Amico Infrastructures (Oxford) Inc. , 1123595 Ontario Inc. o/a Viewcon Construction Limited, Joe Da Silva and/or Joseph Dasilva and/or Joseph Da Silva and/or Jose P. Dasilva (Respondents) (Withdrawn)

0610-09-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Lodgian Inc. c.o.b. "Holiday Inn Select" Windsor, Ontario, Fortis Properties Corporation (Respondents) (Terminated)

SALE OF A BUSINESS

1130-07-R: Iron Workers District Council of Ontario (Applicant) v. Emile Janveaux Forest Products Ltd., G & P Welding & Iron Works Ltd. (Respondents) (Withdrawn)

2162-07-R: The Society of Energy Professionals (Applicant) v. Kinectrics Inc. and Kinects Solutions Inc. (Respondents) (Withdrawn)

1431-08-R: Universal Workers Union Labourers' International Union of North America, Local 183 (Applicant) v. J.P.K. Contracting Ltd. and, Regina Construction Limited (Respondents) (Withdrawn)

3102-08-R: Labourers' International Union of North America, Local 1059 (Applicant) v. 687908 Ontario Inc. o/a Miracle Construction Limited, 2166708 Ontario Inc. o/a Amico Infrastructures (Miracle) Inc. and/or Amico Infrastructures (Oxford) Inc. , 1123595 Ontario Inc. o/a Viewcon Construction Limited, Joe Da Silva and/or Joseph Dasilva and/or Joseph Da Silva and/or Jose P. Dasilva (Respondents) (Withdrawn)

0610-09-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Lodgian Inc. c.o.b. "Holiday Inn Select" Windsor, Ontario, Fortis Properties Corporation (Respondents) (Terminated)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0466-09-R: Marshall Miller (Applicant) v. International Union of Operating Engineers, Local 772 (Respondent), Comstock Canada Ltd. (Intervener) (Granted)

Unit: "all employees of Comstock Canada Ltd. employed at its warehouse located at 3455 Landmark Drive, Burlington, Ontario, employed in shipping, receiving save and except persons above the rank of forepersons" (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	5
Number of ballots segregated and not counted	0

0496-09-R: Eric Paradis (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council, on its own behalf and on behalf of all other affiliated bargaining agents (Respondent) v. White Contracting Ltd. (Intervener) (Dismissed)

0645-09-R: Bastiann Koomans (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied industrial and Service Workers International Union (United Steelworkers) Local 1-2995 (Respondent) v. Cheminis Lumber Inc. (Intervener) (Granted)

Unit: "all employees of Cheminis Lumber Inc. in the Township of Larder Lake, save and except the Mill Manager, those above the rank of Mill Manager, the Sales Manager, and students employed during the school vacation period" (28 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	8
Number of ballots marked against respondent	19
Number of ballots segregated and not counted	2

0671-09-R: Bhupinder Singh Sohi (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) v. Dynasty Furniture Manufacturing Ltd. (Intervener) (Granted)

0693-09-R: Trudy Archibald (Applicant) v. Local No. 67, Canadian Union of Public Employees (Respondent) (Granted)

Unit: "The Society recognizes the Union as the sole bargaining agent for all employees of the Society at Sault Ste. Marie, save and except Shelter Manager, Assistant Manager and persons above the rank of Assistant Manager" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	6
Number of ballots segregated and not counted	0

0732-09-R: Joseph Veronjak (Applicant) v. Teamsters Local Union 938 (Respondent) v. Ambro Transport Inc. (Intervener) (Dismissed)

Unit: "The Company recognizes the Union as the exclusive bargaining agent for its maintenance employees employed in its repair garage at Mississauga, Ontario, or any new location within thirty (30) miles of Metropolitan Toronto, save and except foremen and persons above the rank of foreman, office and sales staff, dispatchers, persons regularly employed for not more than twenty- four (24) hours per week, students employed during the school vacation periods and persons covered by subsisting agreements. It is further understood and agreed that new employees shall not be members of the bargaining unit covered by this Agreement until they have completed their probationary period however, shall receive a probationary wage rate as outlined in Article 19.2 of this Agreement." (5 employees in unit)

0774-09-R: Contant Construction Inc. (Applicant) v. Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America and, Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondents) (Withdrawn)

0778-09-R: Employees of South River Planing Mill Inc. (Applicant) v. USW Local 1-1000 (Respondent) v. South River Planing Mills Inc. (Intervener) (Granted)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

3662-05-U: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. Cambareri Construction Inc. Rocco Cambareri and Gracia Cambareri (Respondent) (Granted)

3958-05-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Pre-Eng Contracting Ltd. and Constaff Construction Ltd. (Respondent) (Granted)

1175-07-U: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Trans Continental Equipment Ltd. (Respondent) (Withdrawn)

1361-07-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Labelle Brothers Construction and/or Labelle Brother Ltd. and 763535 Ontario Inc. o/a Labelle Brothers Excavating and Jean Paul Labelle (Respondent) (Withdrawn)

2004-07-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Looby Construction Limited; L.J. Looby Contracting Ltd.; Looby Builders (Dublin) Ltd. (Respondent) (Withdrawn)

2103-07-U: John David (Applicant) v. Bakery Confectionery & Tobacco Grain Millers International Union Local 210G (Respondent) (Withdrawn)

3224-07-U: International Brotherhood of Electrical Workers (Applicant) v. Access Control Net Inc. (Respondent) (Withdrawn)

3498-07-U: Paula Wilson (Applicant) v. Ontario Public Service Employee's Union (Respondent) v. Ministry of Community Safety and Correctional Services (Intervener) (Dismissed)

3515-07-U: BA International Inc. (Applicant) v. Communications, Energy and Paperworkers Union of America, Local 588-G (Respondent) (Withdrawn)

3545-07-U; 3681-07-U: The Limestone District School Board (Applicant) v. The Elementary Teachers' Federation of Ontario, Limestone Local, Mike Lumb, and Derek Hulse (Respondent); Elementary Teachers' Federation of Ontario and Elementary Teachers' Federation of Ontario, Limestone Local (Applicant) v. Limestone District School Board and Brenda Hunter (Respondent) (Withdrawn)

3628-07-U: Communications, Energy and Paperworkers Union of Canada, Local 588-G (Applicant) v. BA International Inc. (Respondent) (Withdrawn)

3639-07-U: Patrick Greene (Applicant) v. Canadian Union of Public Employees and its Local 1146 (Respondent) v. Corporation of the City of Woodstock (Intervener) (Dismissed)

0534-08-U: Eric Price (Applicant) v. United Steelworkers of America, Local 1005 (Respondent) (Withdrawn)

1099-08-U: Operative Plasters', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local 598 (Applicant) v. Everest Restoration Ltd. (Respondent) (Withdrawn)

1507-08-U: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Cornerstone Structural Restoration Inc. (Respondent) (Withdrawn)

1858-08-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 513 (Applicant) v. Simmons Canada Inc., Simmons Company and Simmons Bedding Company (Respondent) (Withdrawn)

1863-08-U: Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Hedbern Homes, The Hedbern Development Corp. (Respondent) (Withdrawn)

1958-08-U: Bruce Kelly (Applicant) v. Jim Turner, Chuck MacLean and Paddy Ramsingh of Family Services of Peel (Respondent) (Terminated)

2316-08-U: Christopher N. Lyon (Applicant) v. Labourers' International Union of North America, Local 506 (Respondent) (Dismissed)

2472-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Imperial Design-Build Inc. (Respondent) (Withdrawn)

2520-08-U: Edward S. Palmateer and the City of Hamilton outside District Employees of 5167 (Applicant) v. The Canadian Union of Public Employees, Local 5167 (Respondent) v. City of Hamilton (Intervener) (Dismissed)

2670-08-U: Gilbert Renaud (Applicant) v. Canadian Union of Public Employees and its Local 1338-01 (Respondent) v. Waste Services (CA) Inc. (Intervener) (Dismissed)

2766-08-U: Raymond Dunbar (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 4820 (Respondent) v. Haley Industries Limited Magellan Aerospace Corporation (Intervener) (Dismissed)

2789-08-U; 2938-08-U: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Sivananthan Sanjeevan and Fairfield Inn & Suites by Marriott, Toronto Airport (Respondents); United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Sivananthan Sanjeevan, Easton's Toronto Airport Hotel (Caroga) L.P. o/a Fairfield Inn & Suites by Marriott, and, UFCW Local 206 (Respondents) (Dismissed)

2940-08-U: Hyacinth Desrochers (Applicant) v. Educational Resource Facilitators of Peel (Respondent) v. Peel District School Board (Intervener) (Dismissed)

3126-08-U: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Paclaw Building Restoration Inc. , Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Respondents) (Dismissed)

3208-08-U: Jeffrey L. Kwiatkowski (Applicant) v. Canadian Auto Workers Local 444 (Respondent) v. Chrysler Canada Inc. (Intervener) (Withdrawn)

3281-08-U: Robert Gullins, David Hussey, Michael Lloyd, and Perry Speranza (Applicant) v. Centennial Electric Ltd., Discovery Electric Ontario Limited, Fortis Electric Ltd., Galmar Electrical Contracting, Guild Electric Limited, Jay Electric Limited, Nortown Electrical Contractors, Ozz Electric Inc., Panson Electrical Services Ltd., Plan Electric Company, Platinum Electrical Contractors Inc., Proto Electric Contracting Inc., Richview Electric Inc., Riviera Electrical Contractor Inc., Rogol Electric Company Limited, Speedy Electric Contractors Ltd., Symtech Canada Ltd., Tam Electric Ltd. , Urban Electrical Contractors, Zerem Electrical Services Ltd. (Respondents) v. International Brotherhood of Electrical Workers (I.B.E.W.), District 1 - Canada, International Brotherhood of Electrical Workers, Local 353 (Interveners) (Dismissed)

3483-08-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Perras Mechanical Services Ltd. (Respondent) (Withdrawn)

3562-08-U: Alex Elliott, Judy Husset, David Revoredo, Samaroo Valmiki and Surjinderjit Sohi On their own behalf and on behalf of the members of the bargaining unit at the Magna Seating Plant (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada) (Respondent) (Dismissed)

3568-08-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Thermo Fisher Scientific, Inc. and/or, Fisher Scientific Company (Respondents) (Withdrawn)

3753-08-U: Abbas Sadaghyani (Applicant) v. Ontario Public Service Employees Union, Local 444 (Respondent) v. The Board of Governors of the Kingston Hospital (Intervener) (Dismissed)

3754-08-U: Ontario Public Service Employees Union (Applicant) v. Victorian Order of Nurses Canada (Respondent) (Withdrawn)

0034-09-U: Germain Brouillette (Applicant) v. United Steelworkers, Local 1-2995 (Respondent) v. Abitibi-Consolidated Company of Canada (Intervener) (Withdrawn)

0051-09-U: Ashley Hughes, Matt Howson, Tom Pawson and Dean Taylor (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), on behalf of its Local 9597 (Respondent) v. Securitas Canada Limited (Intervener) (Withdrawn)

0079-09-U: Louis Beauline (Applicant) v. UNITE HERE Local 272 (Respondent) (Withdrawn)

0140-09-U: Karthiqesu Thayaparan (Applicant) v. LIUNA Local 506 (Respondent) (Withdrawn)

0145-09-U: Canadian Union of Public Employees (Applicant) v. Hamilton Family Health Team (Respondent) (Withdrawn)

0189-09-U: Frank Scaduto (Applicant) v. United Food & Commercial Workers, Local 206 (Respondent) v. Cara Operations Limited (Intervener) (Dismissed)

0210-09-U: United Food and Commercial Workers International Union Local 175 (Applicant) v. Revera Retirement LP (Respondent) (Withdrawn)

0256-09-U: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 880 (Applicant) v. Windsor Disposal Service Ltd. (Respondent) (Withdrawn)

0400-09-U: Tim Thompson (Applicant) v. Canadian Union of Public Employees Local 32 Canadian Union of Public Employees (Respondent) (Withdrawn)

0541-09-U: Bhupinder Singh Sohi (Applicant) v. United Steelworkers of America (Respondent) (Terminated)

0594-09-U: Colin Walters (Applicant) v. Specialty and Temporary Employees Union (Respondent) (Withdrawn)

0606-09-U: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. A.C. Concrete Forming Ltd. (Respondent) v. Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (Intervener) (Granted)

0650-09-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Henry Heyink Construction Ltd. (Respondent) (Terminated)

0662-09-U; 0717-09-U: Canadian Union of Public Employees, Local 79 (Applicant) v. The City of Toronto (Respondent); City of Toronto (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) (Withdrawn)

0673-09-U: Mr. Doug Edwards (Applicant) v. The Corporation of the Township of Tay (Tay Township) (Respondent) (Dismissed)

0690-09-U: Joan Golding (Applicant) v. Teamsters Local Union No. 879 (Respondent) (Terminated)

0691-09-U: Lloyd Mills (Applicant) v. Teamsters, Chemical, Energy and Allied Workers Division, Local 1979 (Respondent) v. Vincor International Inc. (Intervener) (Withdrawn)

0734-09-U: Zelia Conceicao Frade (Applicant) v. Universal Workers Union Local 183 (Respondent) (Withdrawn)

0826-09-U: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. 614128 Ontario Ltd. o/a Trisan Construction (Respondent) (Withdrawn)

0884-09-U: Tchaka Adofo (Applicant) v. Russ Stallberg - John Fehr - Bill Loreti of the Canadian Union of Postal Workers (Respondent) (Dismissed)

0889-09-U: Wayne A. Smith (Applicant) v. Ontario Provincial Police Association (Respondent) v. Ministry of Community Safety and Correctional Services Ontario Provincial Police (O.P.P.) (Intervener) (Dismissed)

APPLICATION FOR INTERIM ORDER

0412-09-M: Teamsters Local Union No. 419 (Applicant) v. Millard Refrigerated Services, Inc. (Respondent) (Granted)

0555-09-M: Kirby Structures Limited (Applicant) v. Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Respondent) (Dismissed)

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0432-09-M: Sodexo Canada Ltd. Hamilton Health Sciences Corporation (Applicant) v. OPSEU, Local 281 (Respondent) (Granted)

JURISDICTIONAL DISPUTES

3762-07-JD: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. Bruce Power LP, and, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 736 (Respondents) (Granted)

1600-08-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 759 (Applicant) v. AbitibiBowater Inc., Venasky-Pouru Electric Limited, International Brotherhood of Electrical Workers, Local 402 (Respondents) (Withdrawn)

2169-08-JD: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. E.S. Fox Limited and, The International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 736 (Respondents) (Dismissed)

0614-09-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicant) v. PCL Constructors Canada Inc. , Labourers International Union of North America, Local 493 (Respondents) v. Labourers' International Union of North America, Ontario Provincial District Council, Universal Workers' Union, Labourers' International Union of North America, Local 183, The Downsview Group (Interveners) (Dismissed)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0517-08-OH: Steve Weller, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and Local 7135 (Applicant) v. National Steel Car Limited (Respondent)(Withdrawn)

1492-08-OH: Adam Beck (Applicant) v. Trench Limited (Respondent) (Withdrawn)

2783-08-OH: Jesse Valkenier (Applicant) v. Drake International (Respondent) (Endorsed Settlement)

3041-08-OH: Susan Vogan (Applicant) v. Ten Star Financial Services (Respondent) (Dismissed)

3385-08-OH: Michael Cameron (Applicant) v. Kenaidan Contracting Ltd. (Respondent) (Withdrawn)

3763-08-OH: Debborah Holly (Applicant) v. Oakrun Farm Bakery Ltd. (Respondent) (Withdrawn)

0022-09-OH: Darlene Damassia-Correa (Applicant) v. Coin Co International PLC (Respondent) (Withdrawn)

0254-09-OH: James Robert (Bob) Hyde (Applicant) v. The London Transit Commission (Respondent) (Withdrawn)

0386-09-OH: Dengru Wu (Applicant) v. The Corporation of the City of Cambridge (Respondent) (Dismissed)

CONSTRUCTION INDUSTRY GRIEVANCES

3661-05-G: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. Cambareri Construction Inc. (Respondent) (Granted)

2523-07-G: I.B.E.W. Electrical Power Council of Ontario (Applicant) v. Comstock Canada Ltd. (Respondent) v. Electrical Power Systems Construction Association (Intervener) (Dismissed)

2158-08-G: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Bruce Power LP (Respondent) (Dismissed)

2611-08-G: Labourers' International Union of North America Local 625 (Applicant) v. The Bridge Tite Group (Respondent) (Terminated)

2862-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. B-Style Concrete Group Corp. and Bogdan Tkach (Respondent) (Granted)

2864-08-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Talic Woodwork Ltd. c.o.b. as Art Woodwork (Respondent) (Endorsed Settlement)

2939-08-G: International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. North Shore (Sault) Insulations Ltd. and / or Jason Lloyd Frost carrying on business as Algoma Mechanical Insulations (Respondent) (Withdrawn)

3177-08-G: Brick and Allied Craft Union of Canada, Local 29 (Applicant) v. Limen Masonry Limited, Limen Group Ltd. , Limen Masonry (2003) Inc. , Limen Enterprises (2003) Inc., Jomil Renovations Ltd. (formerly Acmar Masonry Inc.), Acmar Group Ltd. (Respondents) v. Masonry Industry Employers' Council of Ontario, Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers (Interveners) (Terminated)

3370-08-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Hi Tech Structures Inc. (Respondent) (Withdrawn)

0268-09-G; 0269-09-G; 0418-09-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 Applicant) v. 3247481 Canada Inc. c.o.b. Cayer Construction (Respondent); United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. 3247481 Canada Inc. o/a Cayer Construction and Jules Cayer (Respondent) (Endorsed Settlement)

0294-09-G: The United Brotherhood of Carpenters & Joiners of America, Local 93 (Applicant) v. Reemaco Inc. (Respondent) (Granted)

0306-09-G: International Brotherhood of Electrical Workers Electrical Power Council of Ontario (Applicant) v. E. S. Fox Limited (Respondent) (Granted)

0309-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 666 (Applicant) v. Medcon Mechanical Ltd. (Respondent) (Endorsed Settlement)

0328-09-G: Brick and Allied Craft Union of Canada and Brick and Allied Craft Union of Canada Local 31 (Applicant) v. Terrazzo, Tile & Marble Guild of Ontario Inc. (Respondent) (Dismissed)

0404-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 Applicant) v. T.P. Erection Company Ltd. (Respondent) (Granted)

0405-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. C.A.P. Concrete Structures Ltd. (Respondent) (Withdrawn)

0409-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Shewfelt Construction Corporation (Respondent) (Granted)

0434-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. AMT Electric Inc. (Respondent) (Endorsed Settlement)

0435-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. AMT Electric Inc. (Respondent) (Endorsed Settlement)

0440-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1156992 Ontario Limited (Respondent) (Withdrawn)

0477-09-G: Universal Workers' Union, L.I.U.N.A., Local 183 (Applicant) v. Accurate Railroad Construction Limited (Respondent) (Endorsed Settlement)

0484-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. La Cie Électrique Britton Ltée (Respondent) (Endorsed Settlement)

0488-09-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. CRO Aluminum Inc. (Respondent) (Endorsed Settlement)

0547-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrastone Construction Inc. and, Ron Colucci (Respondents) (Endorsed Settlement)

0559-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Am-Tech Power Systems Ltd. (Respondent) (Endorsed Settlement)

0560-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Am-Tech Power Systems Ltd. (Respondent) (Endorsed Settlement)

0571-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terra Structures Inc., Nick Ainis and Savino Rovira (Respondent) (Endorsed Settlement)

0578-09-G: Drywall Acoustic Lathing and Insulation, Local 675 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Roland Ballai and Maria C. Jacso c.o.b. as R-Co General Construction (Respondent) (Endorsed Settlement)

0586-09-G: Universal Worker's Union, L.I.U.N.A., Local 183 (Applicant) v. 1000690 Ontario Inc o/a Liza Homes (Respondent) (Granted)

0619-09-G: The International Union of Painters and Allied Trades, Local 200 (Applicant) v. Sean Brophy and Jeff Coleman c.o.b. I.R.C. Painting (Respondent) (Granted)

0633-09-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Luis Ipanaque c.o.b. as Ipal Construction (Respondent) (Granted)

0636-09-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Celaleddin Basar c.o.b. as M.O.B. Engineering Services (Respondent) (Granted)

0638-09-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Envirocon Abatement Ltd. (Respondent) (Granted)

0657-09-G: Labourers' International Union of North America, Local 506 (Applicant) v. FFG Erectors 2006 Inc. (Respondent) (Withdrawn)

0683-09-G: Sheet Metal Workers' International Association, Local 285 (Applicant) v. Belmar Ventilation Systems Inc. (Respondent) (Withdrawn)

0687-09-G: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Aggressive Metals Inc. (Respondent) (Granted)

0688-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Lisi Mechanical Contractors Ltd. (Respondent) (Endorsed Settlement)

0699-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Aggressive Metals Inc. (Respondent) (Withdrawn)

0712-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Prestressed Systems Inc. (Respondent) (Withdrawn)

0716-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. AAtel Communications Inc. (Respondent) (Withdrawn)

0733-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Ainsworth Electric Co. Limited (Respondent) (Granted)

0739-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. B & B Millwork Inc. (Respondent) (Granted)

0742-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Formcrete Structural Ltd. (Respondent) (Granted)

0743-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrastone Construction Inc. (Respondent) (Granted)

0759-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Jerry's Asphalt Paving Inc. (Respondent) (Terminated)

0769-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. Rainone Construction (2007) Limited (Respondent) (Granted)

0789-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Paul J. MacLean o/a Maccam (Respondent) (Granted)

0790-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. William Broderick Rusk o/a X-Act Mobile Welding (Respondent) (Granted)

0792-09-G: Sheet Metal Workers' International Association, Local 537 (Applicant) v. TKG Sheet Metal Contracting Inc. (Respondent) (Granted)

0810-09-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Double Rainbow Stucco Systems Ltd. (Respondent) (Endorsed Settlement)

0832-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Triumph Trim Ltd. (Respondent) (Endorsed Settlement)

0841-09-G: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Croma Painting Ltd. (Respondent) (Granted)

APPEALS - EMPLOYMENT STANDARDS ACT

2212-06-ES; 2215-06-ES; 3766-07-ES: Halton Recycling Ltd. (Applicant) v. Fred Collette and, Director of Employment Standards (Respondents); Halton Recycling Ltd. (Applicant) v. Robert Burns and, Director of Employment Standards (Respondents) (Terminated)

2157-07-ES: Derek Jason Guy (Applicant) v. RayFab Inc. and, Director of Employment Standards (Respondents) (Terminated)

3789-07-ES: Michael Hillhouse, a Director of 2082984 Ontario Inc. o/a Paesano's Bakery and Deli (Applicant) v. Fidaa Ashet et al. and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0221-08-ES: 1287713 Ontario Ltd. o/a Aqua Turf (Applicant) v. Daniel Garlick, Douglas Goyeau, Bruce Jackson and, Director of Employment Standards (Respondents) (Granted)

1240-08-ES: Ronald A. Montreuil and Louise N. Montreuil o/a Tasty Choices Family Restaurant (Applicant) v. Cynthia-Anne Robinson and, Director of Employment Standards (Respondents) (Granted)

1729-08-ES: Raymonde H. Couture (Applicant) v. Chelsea International Group Inc. and, Director of Employment Standards (Respondents) (Endorsed Settlement)

1759-08-ES: Manuel Gomes, a director of Profine Molds Inc. (Applicant) v. Jack Amaral, Fatima Au, Steven Belanger, George Belo, Ricardo Beron, Atila Biber, H. Boxwala, Paulo Campos, D. Castemezzanc, R. Chahal, Matt Chamberlin, Thomas Cheung, Michael Conrad, Mario Contente, Jose Crispin, Van Thuan Do, George Eigler, Schon Faria, Syed H.A. Fathi, Ratna Gandhi, Vito Giglio, John Glac, Mahindra Godhia, Bruno Gomes, Christina Gomes, Michael Gomes, Allan Hall, Lam Van Ho, John Iaquinta, Mike Jelinski, M. Kanesu, Rajeevan Kanhiroli, Julie Karagan, Ashley Kuchar, Peter Kuchar, Yat Kwong Lai, Huy Hnat Le, Luciano Leite, Michael Lester, Chun-Wah Luk, Daniel Lukula, Louise Luskey, Martin Macleod, Khuswant Multani, Peter Neudorf, Minh Thanh Ngo, Khanh Van Nguyen, Nikola Ozanic, P. Parmashivaiah, Mauricio Paratore, M. Puthiyavee, Tihomir Rados, Michael Renaud, Carlos Santos, N. Serniuck, S. Shammana, D. Sookdeo, Allan Staples, Wayne Stoddard, Hong Kien Truong, Sean Vella, S. Vemannaga, Henryk Walczak, Josef Widlak, Minheng Xu, Victoria Yacobovich, Adam Zharzly, Director of Employment Standards (Respondents) (Terminated)

1889-08-ES: 1496161 Ontario Inc. o/a Todd Grier Excavating (Applicant) v. Director of Employment Standards (Respondent) (Dismissed)

2283-08-ES: Marianne Koch (Applicant) v. Medline Canada, Corporation and, Director of Employment Standards (Respondents) (Withdrawn)

2568-08-ES: 2891379 Canada Inc. o/a Canadian Tire (Applicant) v. Stacey Lambert and, Director of Employment Standards (Respondents) (Endorsed Settlement)

2629-08-ES; 2693-08-ES: Joanne Kaj (Applicant) v. Orsini Bros. Inns Inc. o/a Doubletree Resort Lodge & Spa and, Director of Employment Standards (Respondents); Orsini Bros. Inns Inc. o/a Doubletree Resort Lodge & Spa (Applicant) v. Joanne Kaj and, Director of Employment Standards (Respondents) (Endorsed Settlement)

2673-08-ES: Sun Printing House Limited (Applicant) v. Glenn Bingham and, Director of Employment Standards (Respondents) (Granted)

2908-08-ES: 1351696 Ontario Inc. o/a Muskoka on the Rocks (Applicant) v. Jeremy Blencowe and, Director of Employment Standards (Respondents) (Endorsed Settlement)

2969-08-ES: Garfield Christie (Applicant) v. Business Class Limousine Inc. and, Director of Employment Standards (Respondents) (Endorsed Settlement)

2992-08-ES: Apache Burgers Inc. (Applicant) v. Vinay Vaya and, Director of Employment Standards (Respondents) (Terminated)

3296-08-ES: Danielle Robinson (Applicant) v. Sun Media Corporation/Corporation Sun Media o/a The Barrie Examiner and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3304-08-ES: Charles S. Yanover (Applicant) v. Cataraqui Cemetery and, Director of Employment Standards (Respondents) (Dismissed)

3318-08-ES: Stanislaw Matyjaszczyk (Applicant) v. Greatest Custom Homes Ltd. and, Director of Employment Standards (Respondents) (Dismissed)

3330-08-ES: Petawawa Herbal Magic o/a 2135902 Ontario Ltd. (Applicant) v. Vanessa Parrish and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3378-08-ES: JEA Fitzgerald Fuels (1989) Ltd. (Applicant) v. Brian Clements and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3404-08-ES: Patrick J. Manning (Applicant) v. Can Art Aluminum Extrusion Inc. and, Director of Employment Standards (Respondents) (Terminated)

3461-08-ES: S.A.M. Electric (Applicant) v. Asadollah Moghaddamnejad and, Director of Employment Standards (Respondents) (Withdrawn)

3590-08-ES: Olga Lobanov (Applicant) v. Bombardier Inc. and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3603-08-ES: Florije Sopjani (Applicant) v. The Incorporated Synod of the Diocese of Toronto and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3609-08-ES: Ivan Turkalj (Applicant) v. Triumph Express Service Canada Inc. and, Director of Employment Standards (Respondents) (Dismissed)

3613-08-ES: Destaron Property Management Ltd. (Applicant) v. Adel Janssen and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3680-08-ES: Pyl-Chem Hotel Limited o/a Days Inn Toronto East Beaches (Applicant) v. Hazel Hosue and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3689-08-ES: 1461401 Ontario Inc. o/a Kerby's Towing (Applicant) v. Corey Ryan and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3734-08-ES: Saif-ur Syed (Applicant) v. Advanced Metal Stamping Corporation and, Director of Employment Standards (Respondents) (Endorsed Settlement)

3789-08-ES: McLaren Press Graphic Ltd. (Applicant) v. Ruth Cunningham and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0005-09-ES: Krista Rolland (Applicant) v. Skyjack Inc. , Director of Employment Standards (Respondents) (Endorsed Settlement)

0072-09-ES: Brother's Restaurant (Whitby) Inc. (Applicant) v. Deanna Brett and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0126-09-ES: Ali Aslani (Applicant) v. 1698020 Ontario Inc. o/a Subway Restaurant and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0154-09-ES: Darryl Shewchuk o/a Pearl Street Licensing Office (Applicant) v. Annie Tremblay and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0156-09-ES: Tong Zhang Operating as Pizza Nova (Applicant) v. David Peters and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0157-09-ES: The Med Spa Inc. (1672389 Ontario Inc.) (Applicant) v. Fara Mughal, and, Director of Employment Standards (Respondents) (Terminated)

0158-09-ES: Lida C. Leon (Applicant) v. The Marskell Group, Director of Employment Standards (Respondents) (Endorsed Settlement)

0159-09-ES: Estate of Mrs. Ruth E. Playle (Applicant) v. Greta McDonald and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0230-09-ES: Bilingual Source (Applicant) v. Peter Rajabian and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0232-09-ES: Fadi N. Elhami, A Director of 1653563 Ontario Inc. c/o as Golden Griddle (Applicant) v. Senthuran Yogarajoh, Elisha Zoberman, Thavarajakulasingham Tharmalinngham, Sritharan Varithiljngham, Director of Employment Standards (Respondents) (Endorsed Settlement)

0272-09-ES: King Carrier Ltd. (Applicant) v. Kewaf Singh, and, Director of Employment Standards (Respondents) (Terminated)

0292-09-ES: Philip S. Race (Applicant) v. Kevin David Charles Little o/a KL Woodworking and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0304-09-ES: Maple Rock Construction Inc. (Applicant) v. Michael Clark, and, Director of Employment Standards (Respondents) (Terminated)

0316-09-ES: Mosher's Auto Service Inc. (Applicant) v. Jerome E. Clarke, and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0338-09-ES: Manjit Bains (Applicant) v. Express Employment Professionals and, Director of Employment Standards (Respondents) (Dismissed)

0343-09-ES: Imasar Engineering Inc. (Applicant) v. Mahmoud Abdel Dayem and, Director of Employment Standards (Respondents) (Terminated)

0352-09-ES: Gordon Bradshaw (Applicant) v. Total Credit Recovery Ltd. and, Director of Employment Standards (Respondents) (Withdrawn)

0490-09-ES: Terrence Hawkins (Applicant) v. 2118207 Ontario Inc./Ideal Financial Services Inc. and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0500-09-ES: Hanyu Tang (Applicant) v. Landinc Design Inc., and, Director of Employment Standards (Respondents) (Terminated)

0533-09-ES: Mik Wall Systems Inc. (Applicant) v. Skylar Bowker, and, Director of Employment Standards (Respondents) (Dismissed)

0539-09-ES: Ana Maria Palma (Applicant) v. SRT Med-Holdings Inc. o/a SRT Med-Staff, Director of Employment Standards (Respondents) (Endorsed Settlement)

0598-09-ES: EMI Resorts Services Inc. (Applicant) v. Cheryl Ferguson and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0603-09-ES: Dancing Blueberries & Desserts (Applicant) v. Jessica Fleury and, Director of Employment Standards (Respondents) (Dismissed)

0617-09-ES: Bilingual Source (Applicant) v. Brigitte Taylor, and, Director of Employment Standards (Respondents) (Dismissed)

0664-09-ES: Loyalist Gymnastics Club Inc. (Applicant) v. Merle Pyke and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0665-09-ES: Loyalist Gymnastics Club Inc. (Applicant) v. Lynn Pyke and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0667-09-ES: Fatemeh Sharafnya (Applicant) v. A. Jaffer Pharmacy Ltd. o/a Shoppers Drug Mart and, Director of Employment Standards (Respondents) (Dismissed)

0675-09-ES: Continental Furniture Ltd. (Applicant) v. Darrell Simon and, Director of Employment Standards (Respondents) (Withdrawn)

0680-09-ES: Elaine Scudds (Applicant) v. Personal Touch Hair Studio Toronto Corp. and, Director of Employment Standards (Respondents) (Withdrawn)

0681-09-ES: Virginia M. Dacanay (Applicant) v. Hurley Corporation and, Director of Employment Standards (Respondents) (Terminated)

0685-09-ES: Manotick Building Centre Top Solid Countertops Inc. (Applicant) v. Daniel Trudel and, Director of Employment Standards (Respondents) (Terminated)

0725-09-ES: Brian Restrepo (Applicant) v. Imperial Coffee and Services Inc. and, Director of Employment Standards (Respondents) (Dismissed)

0812-09-ES: Natalie Kounnas (Applicant) v. Aliviar Spa Inc. and, Director of Employment Standards (Respondents) (Dismissed)

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1397-07-HS: Ontario Clean Water Agency (Applicant) v. Ontario Public Service Employees' Union, Local 584 and, Carl Broughton, Inspector (Respondents) (Withdrawn)

0429-08-HS: McNally Construction Inc. (Applicant) v. Labourers International Union of North America Local 183 and, Michael Rumble, Inspector (Respondents) (Withdrawn)

0972-08-HS: Ontario Nurses' Association (Applicant) v. Canadian Blood Services, Sudbury, Peg Scherzinger, Inspector (Respondents) (Withdrawn)

1365-08-HS: Barrie Welding & Machine (1974) Ltd. (Applicant) v. Byron MacDonald, Mike Waechter and, Adrian David, Inspector (Respondents) (Withdrawn)

3679-08-HS: C.A.W., Local 598 (Applicant) v. Xstrata Nickel and, Shaun Carter, Inspector (Respondents) (Withdrawn)

3736-08-HS: Consolidated 2000 Inc. (Applicant) v. Form Work Council of Ontario, c/o Universal Workers Union, Labourers International Union of North America, Local 183 and, Phillip Ferreira, Inspector (Respondents) (Withdrawn)

0048-09-HS: Emanuel Gianfriddo (Applicant) v. Bondfield Construction Company Limited and, Trevor Clough, Inspector (Respondents) (Withdrawn)

0457-09-HS: Catherine Koolen (Applicant) v. Caressant Care Woodstock Nursing Home and, Beth Nethercott, Inspector (Respondents) (Withdrawn)

0507-09-HS: Xstrata Nickel (Applicant) v. Office, Clerical and Technical Workers Union, USWA, Local 2020 and, Rick Kulyski, Inspector (Respondents) (Dismissed)

0558-09-HS: OPSEU Local 440 (Applicant) v. Beachgrove Complex (Respondent) (Terminated)

0625-09-HS: Border Steel Ltd. (Applicant) v. Workers of Border Steel Ltd. and, John Lepera, Inspector (Respondents) (Granted)

0679-09-HS: Gareth Jones (Applicant) v. Ministry of Public Safety & Correctional Services and, Dianne Hannah, Inspector (Respondents) (Terminated)

0684-09-HS: Kensington Court (Applicant) v. Daryel Brisebois, JHSC Member and, Deborah Meyer, Inspector (Respondents) (Dismissed)

0697-09-HS: Aecon Construction Group Inc. (Applicant) v. Cement Masons - Local 598, Jim Boniface, Inspector (Respondents) (Granted)

CECBA - EXEMP: RELIGIOUS CONVICTION/BELIEF

3672-08-M: Rachel I. Fourny (Applicant) v. Canadian Union of Public Employees and its Local 5678, Upper Canada District School Board (Respondents) (Withdrawn)

0198-09-M: Gailene Durrant Lennon (Applicant) v. Service Employees International Union Local 1, Valleyview Residence (Respondents) (Withdrawn)

PAY EQUITY ACT

2118-07-PE: Comfort Inn Motel (Applicant) v. Beverly Pottle, Rose Smith, Marion Fisher, Lynda Raby, Hazel Scott, Elizabeth Dolomont, Wanda Hanson, Barbara Kurica, Janice Reed, Marija Raic, Amanda St. George (Respondents) (Terminated)

3311-08-PE: Addiction Services of Eastern Ontario (Applicant) v. Canadian Union of Public Employees (CUPE) Local 1997-02 (Respondent) (Dismissed)

REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

0456-09-M: Service Employees' International Union, Local 1 Canada (Applicant) v. 1310997 Alberta Ltd. o/a Governor's Walk Retirement Residence (Respondent) (Withdrawn)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

3483-98-U: Michael David Carden Moles (Applicant) v. The Society of Ontario Hydro Professional and Administrative Employees (Respondent) v. Ontario Hydro (Intervener) (Dismissed)

4132-Y3-R: Donna Leslie (Applicant) v. Northern Ontario Joint Council of the Retail, Wholesale & Department Store Union District Council of the United Food and Commercial Workers International Union (Respondent) v. Northern Uniform Service Corp. (Intervener) (Withdrawn)

2858-05-ES: Michael David Watts (Applicant) v. Frank G. Charbonneau o/a Totomenai Lodge and, Director of Employment Standards (Respondents) (Dismissed)

3678-07-U: Mary L. Heyens (Applicant) v. Canadian Union of Public Employees and its Local 241 (Respondent) v. The Corporation of the City of Guelph (Intervener) (Dismissed)

2403-08-ES: Ziad El-Nachef (Applicant) v. Rona Ontario Inc. and, Director of Employment Standards (Respondents) (Dismissed)

3306-08-ES: El Cantico Inc. o/a Geness Buffet Restaurant (Applicant) v. Hui Bo Yu and, Director of Employment Standards (Respondents) (Dismissed)

3356-08-ES: Stephanie Begin (Applicant) v. Hong Guo operating as Rose and Thorne 111 and, Director of Employment Standards (Respondents) (Dismissed)

0157-09-ES: The Med Spa Inc. (1672389 Ontario Inc.) (Applicant) v. Fara Mughal, and, Director of Employment Standards (Respondents) (Dismissed)

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JULY 2009

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1266-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v.763535 Ontario Inc., 763535 Ontario Inc. (Respondents)

Unit: "all construction labourers in the employ of 763535 Ontario Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of 763535 Ontario Inc. in all sectors of the construction industry in the Townships of Springer, Pedley, Grant, Field, Badgerow, Caldwell, Latchford, Bertram and Patterson, save and except non-working foremen and persons above the rank of non-working foreman, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit) *(Clarity Note)*

3265-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sethi Group Inc. and Priyance Hospitality Inc. Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Sethi Group Inc. and Priyance Hospitality Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Sethi Group Inc. and Priyance Hospitality Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

3613-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. RCLO Exterior Stucco Ltd. (Respondent)

Unit: "all construction labourers, carpenters, carpenters' apprentices, painters and painters' apprentices in the employ of RCLO Exterior Stucco Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

0593-08-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Hi-Tek Dev Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Hi-Tek Dev Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Hi-Tek Dev Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (8 employees in unit) *(Clarity Note)*

0075-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Star Forming Inc. (Respondent)

Unit: "all construction labourers in the employ of Star Forming Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Star Forming Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (4 employees in unit)

0652-09-R: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. 1722871 Ontario Inc.o/a Incore Interior Exterior Contracting (Respondent)

Unit: "all carpenters and carpenters apprentices in the employ of 1722871 Ontario Inc. o/a Incore Interior Exterior Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 1722871 Ontario Inc. o/a Incore Interior Exterior Contracting in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0890-09-R: International Union of Operating Engineers, Local 793 (Applicant) v. 1478687 Ontario Ltd. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers, or similar equipment and those engaged in repairing and maintaining of same, and employees engaged as surveyors in the employ of 1478687 Ontario Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers, or similar equipment and those engaged in repairing and maintaining of same, and employees engaged as surveyors in the employ of 1478687 Ontario Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0948-09-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Sterling Earth Works Inc. (Respondent)

Unit: "all construction labourers and all persons engaged in the operation of cranes, shovels, bulldozers or similar equipment and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Sterling Earth Works Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1013-09-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. 2176277 Ontario Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 2176277 Ontario Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 2176277 Ontario Inc. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

1033-09-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Site Intégration Plus Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Site Intégration Plus Inc. in the industrial,

commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Site Intégration Plus Inc. in all sectors of the construction industry in The City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1077-09-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Trade Tech Mechanical Services Inc. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Trade Tech Mechanical Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Trade Tech Mechanical Services Inc. in all sectors of the construction industry in the County of Lambton and in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (8 employees in unit)

1090-09-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Bradarick H Drywall Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Bradarick H Drywall Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Bradarick H Drywall Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit) *(Clarity Note)*

1105-09-R: Labourers' International Union of North America, Local 625 (Applicant) v. A. G. Concrete & Snowplowing (Respondent)

Unit: "all construction labourers in the employ of A. G. Concrete & Snowplowing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of A. G. Concrete & Snowplowing in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1122-09-R: Labourers' International Union of North America, Local 625 (Applicant) v. Larry Santos Construction (Respondent)

Unit: "all construction labourers in the employ of Larry Santos Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all construction labourers in the employ of Larry Santos Construction in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1213-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. A1 Mann Construction Ltd (Respondent)

Unit: "all construction labourers in the employ of A1 Mann Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of A1 Mann Construction Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties

of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (4 employees in unit)

Bargaining Agents Certified Subsequent to Vote

2438-08-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Native Child and Family Services of Toronto (Respondent)

Unit: "all employees of Native Child and Family Services of Toronto working in the City of Toronto, save and except supervisors and persons above the rank of supervisor, co-op students, administrative assistants to directors and employees of the Human Resources Department" (144 employees in unit)*(Clarity Note)*

Number of names of persons on revised voters' list	159
Number of persons who cast ballots	105
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	88
Number of segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	29
Number of ballots segregated and not counted	17

0653-09-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 58 (Applicant) v. GBSP Centre Corp. o/a Young Centre for the Performing Arts (Respondent)

Unit: "all stage employees employed by GBSP Centre Corp. o/a Young Centre for the Performing Arts in the City of Toronto, save and except Assistant Technical Director and persons above that rank" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	8

0711-09-R: The Dufferin-Peel Educational Resource Workers' Association (Applicant) v. Dufferin-Peel Catholic District School Board (Respondent)

Unit: "all Supply Educational Resource Workers employed by Dufferin-Peel Catholic District School Board in its schools in the Regional Municipality of Peel and the County of Dufferin, save and except supervisors and persons above the rank of supervisor" (125 employees in unit) *(Having regard to the agreement of the parties.)(Clarity Note)*

Number of names of persons on revised voters' list	152
Number of persons who cast ballots	54
Number of ballots excluding segregated ballots cast by persons whose names	33

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	51
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

0780-09-R: Teamsters Local Union No. 419 (Applicant) v. F.G. Lister & Co. Ltd. (Respondent)

Unit: "all employees of F.G. Lister & Co. Ltd. at the Ontario Food Terminal, Toronto, save and except Supervisors, persons above the rank of Supervisor, Office, Clerical and Sales Staff and Students" (24 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	2

0800-09-R: Teamsters Local Union No. 879 (Applicant) v. CNN Staffing Solutions Inc. (Respondent)

Unit: "all employees CNN Staffing Solutions Inc. working at or out of the yard at 2738 Thompson Road., Smithville, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff and dispatchers." (17 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0807-09-R: International Association of Machinists and Aerospace Workers (Applicant) v. Voyageur Patient Transfer Services Inc. (Respondent)

Unit: "all employees of Voyageur Patient Transfer Services Inc. based in the City of Sarnia, working in and out of the City of Sarnia, save and except persons exercising managerial function" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

0815-09-R: Canadian Union of Public Employees (Applicant) v. Peterborough, Victoria, Northumberland and Clarington Catholic District School Board (Respondent)

Unit: "all casual employees of the Peterborough, Victoria, Northumberland and Clarington Catholic District School Board save and except supervisors, persons above the rank of supervisor, one (1) confidential secretary, one (1) executive assistant, administrative assistants to the supervisory officers, one (1) administrative assistant to the director's office, human resources services staff, financial analyst, financial officer, and teachers defined by the Teachers Profession Act and employees in bargaining units for whom any trade union held bargaining rights as of June 16, 2009" (245 employees in unit)

Number of names of persons on revised voters' list	219
Number of persons who cast ballots	56
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	8
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	53
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

0828-09-R: Service Employees International Union Local 1 Canada (Applicant) v. Fairview Nursing Home Ltd. (Respondent)

Unit: "all registered nurses of Fairview Nursing Home Ltd. in the City of Toronto, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

0837-09-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Aramark Canada Ltd. (Respondent)

Unit: "all employees of Aramark Canada Ltd. employed at Toronto Hydro, 500 Commissioners Street in the City of Toronto, save and except supervisors, persons above the rank of supervisor, chef, office and clerical staff" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0842-09-R: Canadian Union of Public Employees (Applicant) v. Christie Ossington Neighbourhood Centre (Respondent)

Unit: "all employees employed by Christie Ossington Neighbourhood Centre in the City of Toronto, save and except supervisors and persons above the rank of supervisor" (30 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	31
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

0919-09-R: Health Care and Service Workers Union, Local 304 affiliated with the Christian Labour Association of Canada (Applicant) v. Chartwell Seniors Housing REIT carrying on business as Chartwell Classic Oakville (Respondent)

Unit: "all employees of Chartwell Seniors Housing REIT carrying on business as Chartwell Classic Oakville in the City of Oakville, save and except supervisors, persons above the rank of supervisor, and office and clerical staff" (19 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

0939-09-R: Christian Labour Association of Canada (Applicant) v. 421532 Ontario Ltd., operating as City Cabs (Respondent)

Unit: "all office and clerical employees of 421532 Ontario Ltd., operating as City Cabs employed in the City of Kitchener save and except supervisors and persons above the rank of supervisor" (12 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1030-09-R: Ontario Public Service Employees Union (Applicant) v. Royal Ottawa Health Care Group (Respondent)

Unit: "all graduate child and youth counsellors employed by the Royal Ottawa Health Care Group in the Regional Municipality of Ottawa Carleton, save and except supervisors, and persons above the rank of supervisor" (16 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

0367-07-R; 0368-07-R; 0369-07-R; 0370-07-R; 0371-07-R; 0372-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Cope Construction and Contracting Inc. (Respondent) v. International Brotherhood of Electrical Workers, Local 530, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local 128, Operative Plasterers', Cement Masons' and Restoration Steeplejacks International Association of the United States and Canada, Local 598, International Union of Operating Engineers Local 793, Millwrights Regional Council of Ontario and Millwrights, United Brotherhood of Carpenters and Joiners of America, Local 1592, Sheet Metal Workers International Association Local 539, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Union 880, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 663 (Interveners)

1192-09-R: Canadian Union of Public Employees (Applicant) v. Governing Council of the University of Toronto (Respondent)

Applications for Certification Dismissed Subsequent to Vote

0853-09-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. NORAMPAC - OCD, a Division of Cascades Canada Inc. (Respondent)

Unit: "all employees of NORAMPAC - OCD, A DIVISION OF CASCADES CANADA INC. in the City of Mississauga save and except supervisors, persons above the rank of supervisor, and office, clerical and sales staff" (96 employees in unit)

Number of names of persons on revised voters' list	132
Number of persons who cast ballots	108
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	95
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	35
Number of ballots marked against applicant	58
Number of ballots segregated and not counted	13

0858-09-R: International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 822 (Applicant) v. The Canadian Stage Company (Respondent)

Unit: "all wardrobe and wig employees of the Responding Party in the City of Toronto, save and except technical director and persons above the rank of technical director. CLARITY NOTE: The Applicant currently represents a similar bargaining unit which specifically excludes those in the construction of wardrobe materials. This Application is for those excluded employees who work at the Responding Party's wardrobe shop" (3 employees in unit) *(Clarity Note)*

0859-09-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Signature Living (Rockcliffe) Management Inc. o/a Rockcliffe Retirement Residence (Respondent)

Unit: "all employees of Signature Living (Rockcliffe) Management Inc. (operating as the Rockcliffe Retirement Residence), located at 100 Island Lodge Ave. located in the City of Ottawa, save and except Managers and/or Directors, persons above the rank of Manager and/or Director, office and clerical staff, and Head Chef" (49 employees in unit)

Number of names of persons on revised voters' list	49
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	42
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	1

0864-09-R: Service Employees International Union Local 1 Canada (Applicant) v. Haldimand War Memorial Hospital (Respondent)

Unit: "all employees of Haldimand War Memorial Hospital in the town of Dunnville, save and except supervisors, persons above the rank of supervisor, paramedical technologists and registered nurses" (90 employees in unit)

Number of names of persons on revised voters' list	88
Number of persons who cast ballots	74
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	52
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	22

Applications for Certification Withdrawn

1662-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Rio Landscaping Limited (Respondent)

2110-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Graham Group Ltd. and, Graham Construction & Engineering Inc. (Respondents) v. Jasper Constructors Ltd. (Intervener)

1384-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. KJ Beamish Construction Co. Limited (Respondent)

1816-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Montebello Homes Inc. and/or Montebello I GP Inc., Camflo Construction Ltd. or all of them (Respondents)

0963-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Advanced Construction Corporation (Respondent)

1057-09-R: Communications, Energy and Paperworkers Union of Canada Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. Sun Media Corporation; Osprey Media Publishing Inc.; and The Observer (Respondents)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

3122-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-500 (Applicant) v. Pharmacy Won Inc., Pharmacy 2 Drug and Food Inc. (Respondents) *(Withdrawn)*

3252-08-R: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Albamor Construction Limited (#000219892), Albamor Construction and Engineering Inc.(#1535846), Albamor Investments Inc.(#1535846), Sila Investments Inc. (#3141519), Zeus Roofing Contractors of Windsor Inc. (#1485938), Arcas Construction Ltd.,, Walker Plaza 1200 Inc. (#770067), (Respondents) *(Withdrawn)*

0838-09-R: United Food & Commercial Workers, Local 206 (Applicant) v. Avlis Restaurant Inc. and, Cara Operations Limited (Respondents) *(Withdrawn)*

SALE OF A BUSINESS

3122-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-500 (Applicant) v. Pharmacy Won Inc., Pharmacy 2 Drug and Food Inc. (Respondents) *(Withdrawn)*

3252-08-R: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Albamor Construction Limited (#000219892), Albamor Construction and Engineering Inc.(#1535846), Albamor Investments Inc.(#1535846), Sila Investments Inc. (#3141519), Zeus Roofing Contractors of Windsor Inc. (#1485938), Arcas Construction Ltd.,, Walker Plaza 1200 Inc. (#770067), (Respondents) *(Withdrawn)*

3386-08-R: Ontario Public Service Employees Union (Applicant) v. Homes First Society and (Respondent) v. Health Care and Service Workers Union, Local 304, affiliated with the Christian Labour Association of Canada (Intervener) *(Terminated)*

0838-09-R: United Food & Commercial Workers, Local 206 (Applicant) v. Avlis Restaurant Inc. and, Cara Operations Limited (Respondents) (Withdrawn)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3197-06-R: City of Hamilton (Applicant) v. United Brotherhood of Carpenters & Joiners of America and its Locals and Affiliates (Respondent) v. The Canadian Union of Public Employees and its Local 5167 and its Local 1041 (Intervener) *(Withdrawn)*

3783-08-R: The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. International Union of Painters and Allied Trades, Local 1891 (Respondent) *(Withdrawn)*

0567-09-R: Bart Davison (Applicant) v. Teamsters Local Union No. 91 (Respondent) v. County Bus Service Limited (Intervener) *(Granted)*

Unit: "all bus drivers employed by County Bus Service Limited working in and out of 507B Ashley Street, Foxboro, Ontario, K0K 2B0, save and except supervisors, persons above the rank of supervisor, full-time dispatchers, mechanics, owners, sales and fulltime office/clerical staff" (14 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	1

0713-09-R: Rodney Lemon, Aram Bulganian, Greg Marshall-Young, Brian Legere (Applicant) v. National Automobile Aerospace Transportation and General Workers Union of Canada, CAW (Canada) and its Local 199 (Respondent) (Granted)

Unit: "The Company recognizes the Union as the exclusive bargaining agent for all employees of Neptunus Yachts Inc. in the City of St. Catharines, save and except supervisors, person above the rank of supevisor, office, clerical and sales

staff and up to three (3) persons regularly employed for not more than 24 hours per week and students employed during the school vacation. period." (93 employees in unit)

Number of names of persons on revised voters' list	87
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	46
Number of ballots segregated and not counted	3

0977-09-R: Paul Farrar (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge #128 (Respondent) v. Thermogenics Inc. (Intervener) *(Granted)*

Unit: "The Company agrees to recognize the union as the sole collective bargaining agency in the shop at Aurora Ontario for all hourly rated employees, save and except foremen, foremen's clerks, guards, persons regularly employed for not more than twenty-four (24) hours per week, those above the rank of foreman and office staff." (19 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	8
Number of ballots marked against respondent	12
Number of ballots segregated and not counted	0

1005-09-R: John Robinson & Brian Jackson on behalf of a group of employees of CES (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) v. Canadian Electrical Services (Intervener) *(Granted)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

0993-09-U: Travois Medical Transfer (Applicant) v. Canadian Union of Public Employees and its Local 4000 (Respondent) *(Withdrawn)*

1076-09-U: City of Toronto (Applicant) v. Canadian Union of Public Employees, Toronto Civic Employees Union, Local 416, Mark Ferguson, and Glenn Fontaine (Respondent) *(Granted)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

3052-05-U: Lou Tsan (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 40 (Respondent) v. Art Gallery of Ontario (Intervener) *(Dismissed)*

3228-07-U: Elementary Teachers' Federation of Ontario and Ottawa-Carleton Elementary Teachers' Federation (Applicant) v. Ottawa Carleton District School Board, Lorne Rachlis, Janice McCoy, Sue Peter-Weeks, Larry

Archibald, Cathy Nevins, Peter Garnwell, Ann O'Dacre, Dan Wiseman, Hanif Jamal, Pamela Bain, Shelley Lacroix, Dana Slater, David Petrie, Helen Jarvis, Nicole Turpin, Marina Saulig and Cindy Beauchamp (Respondents) *(Withdrawn)*

0750-08-U: Marcello DeGregorio (Applicant) v. Brick and Allied Craft Union of Canada (Respondent) *(Dismissed)*

1389-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. KJ Beamish Construction Co. Limited (Respondent) *(Withdrawn)*

1542-08-U: Brain Douglas Seguin (Applicant) v. United Steelworkers, Local 1-2693 (Respondent) *(Withdrawn)*

1842-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Montebello Homes Inc., Camflo Construction Ltd. (Respondents) *(Withdrawn)*

1925-08-U: Youri Sytik (Applicant) v. International Association of Machinists and Aerospace Workers and its Local 1295 (Respondent) *(Dismissed)*

2961-08-U: Michael R. Montgomery (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. Pave-Al Limited (Intervener) *(Dismissed)*

3408-08-U: The United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Robert Construction General Contractor Inc., Lee Harrington and Brian Anderson (Respondent) *(Withdrawn)*

3492-08-U: Tony Heinicke (Applicant) v. Service Employees International Union, Local 1.ON (Respondent) v. Thunder Bay Regional Health Science Centre (Intervener) *(Withdrawn)*

3675-08-U: Kamattie Persaud (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Scarborough Hospital (Intervener) *(Dismissed)*

3701-08-U: Rose Marie Kall (Applicant) v. Canadian Union of Public Employees and its Local 1317 (Respondent) v. Niagara Catholic District School Board (Intervener) *(Withdrawn)*

0003-09-U: Timothy G. Mitchinson (Applicant) v. International Brotherhood of Electrical Workers, First District, Canada (Respondent) *(Dismissed)*

0015-09-U: Ontario Public Service Employees Union (Applicant) v. Ontario Shores Centre for Mental Health Sciences (Respondent) *(Withdrawn)*

0076-09-U: Borge Bondergaard (Applicant) v. Canadian Auto Workers Local 370 (Respondent) v. Southwire Canada Company (Intervener) *(Dismissed)*

0092-09-U: Frank Folz (Applicant) v. Canadian Union of Public Employees and its Local 2599 (Respondent) *(Withdrawn)*

0191-09-U: Vinh Tran Vuong (Applicant) v. IBEW Local 0355 (Respondent) *(Withdrawn)*

0200-09-U; 0201-09-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Cruz Construction & Renovation Inc. , Aliance Construction Ltd. , Aliance Construction Group Inc., Aliance Masonry (2005) Ltd., Baden Masonry Inc. , A & D Masonry Consulting Ltd., Tony Cruz and, Fernando Costa (Respondents) v. Ontario Masonry Contractors'Association/Masonry Industry Employers' Council of Ontario (Intervener) *(Granted)*Brick and Allied Craft Union of Canada, Local 5 and International Union of Bricklayers and Allied Craftworkers, Local 5 (Applicant) v. Cruz Construction & Renovation Inc., Aliance Construction Group Inc., Aliance Masonry (2005) Ltd. , Aliance Construction Ltd., Baden Masonry Inc. and, A & D Masonry Consulting Ltd., Tony Cruz and, Fernando Costa (Respondents) v. Masonry Industry Employers' Council of Ontario (Intervener) *(Granted)*

0277-09-U: Health Care and Service Workers Local 304, affiliated with the Christian Labour Association of Canada (Applicant) v. Homes First Society (Respondent) v. Ontario Public Service Employees Union (Intervener) *(Withdrawn)*

0371-09-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Holiday Inn Express Milton (Noorani Holding Ltd.) (Respondent) *(Withdrawn)*

0419-09-U: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Conestogo Electric Inc. (Respondent) *(Withdrawn)*

0467-09-U: John Peterson (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 333 (Respondent) *(Withdrawn)*

0552-09-U: Donald Branderhorst (Applicant) v. Teamster's Local 879 (Respondent) *(Dismissed)*

0589-09-U: Veronica Larmond (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) *(Dismissed)*

0623-09-U: Ghazanfar Mirza (Applicant) v. Canadian Union of Public Employees and its Local 2544 (Respondent) v. Peel District School Board (Intervener) *(Dismissed)*

0641-09-U: Garry Hicken (Applicant) v. Joe Pali and, Sunnybrook Health Sciences Centre (Respondents) v. Service Employees International Union Local 1 Canada (Intervener) *(Dismissed)*

0753-09-U: International Union of Operating Engineers, Local 793 (Applicant) v. James Elliott Underground Construction Inc. (Respondent) *(Granted)*

0768-09-U: Shawn A. Bishop (Applicant) v. The Canadian Auto Workers Union, Local 229 (Respondent) v. The Board of Governors of Lakehead University (Intervener) *(Withdrawn)*

0817-09-U: David Archibald (Applicant) v. SEIU Local 1 Canada (Respondent) *(Withdrawn)*

0844-09-U: Roger L. McKerral (Applicant) v. Ontario Public Service Employees Union Local 676 (Respondent) *(Withdrawn)*

0857-09-U: Ontario Public Service Employees Union (Applicant) v. Woodstock and District Developmental Services (WDDS) (Respondent) *(Withdrawn)*

0966-09-U: Amalia Maquiling (Applicant) v. HSTU Local 261 (Respondent) *(Dismissed)*

0974-09-U: Power Workers' Union, Canadian Union of Public Employees Local 1000 - C.L.C. (Applicant) v. Grimsby Power Inc. (Respondent) *(Withdrawn)*

0979-09-U: Sonia Strumillo (Applicant) v. Ontario Public Service Employees Union, Local 163 (Respondent) *(Withdrawn)*

1021-09-U: International Union of Operating Engineers, Local 793 (Applicant) v. JBL Construction, (A Division of 1644472 Ontario Limited) (Respondent) *(Endorsed Settlement)*

1045-09-U: Metal Supermarkets (Applicant) v. Canadian Office and Professional Employees Union Local 343 (Respondent) *(Dismissed)*

APPLICATION FOR INTERIM ORDER

0775-09-M: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Almon Equipment Ltd. (Respondent) *(Granted)*

1018-09-M: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. 1319557 Ontario Limited c.o.b. Upper Gage Price Chopper (Respondent) *(Dismissed)*

JURISDICTIONAL DISPUTES

1616-08-JD; 1617-08-JD; 1618-08-JD: Sheet Metal Workers' International Association, Local 269 (Applicant) v. Laframboise Mechanical-Electrical Limited, Labourers' International Union of North America, Local 247 (Respondents) International Brotherhood of Electrical Workers, Local 115 (Applicant) v. Laframboise Mechanical-Electrical Limited, Labourers' International Union of North America, Local 247 (Respondents) United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 221 (Applicant) v. Laframboise Mechanical-Electrical Limited, Labourers' International Union of North America, Local 247 (Respondents) *(Granted)*

2443-08-JD: Aecon Industrial, a Division of Aecon Construction Group Inc. (Applicant) v. Labourers' International Union of North America, Local 625 and, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Respondents) *(Granted)*

3532-08-JD: Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 1946 (Applicant) v. Ellis Don Corporation and, Labourers' International Union of North America, Local 1059 (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

4096-06-M; 4097-06-M; 4098-06-M: The Crown in Right of Ontario (Applicant) v. The Professional Engineers and Architects of the Ontario Public Service (PEGO) (Respondent) *(Granted)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

4309-04-OH: Mukesh Goel (Applicant) v. Peel District School Board (Respondent) v. The Ontario Secondary School Teachers' Federation, District 19 (Intervener) *(Dismissed)*

1398-06-OH; 1163-07-OH:: Coral Johnson (Applicant) v. Alcohol and Gaming Commission of Ontario (Respondent) *(Dismissed)*

3227-07-OH: Elementary Teachers' Federation of Ontario and Ottawa-Carleton Elementary Teachers' Federation (Applicant) v. Ottawa Carleton District School Board, Cathy Nevins, Peter Wiseman, Pamela Bain, Shelley Lacroix, Helen Jarvis (Respondents) *(Withdrawn)*

3668-08-OH: Darren Roome (Applicant) v. Ajax Tocco Magnethermic (Respondent) *(Withdrawn)*

0760-09-OH: Teresa Denby (Applicant) v. General Motors of Canada Ltd. (Respondent) *(Dismissed)*

0783-09-OH: Cory Bardy (Applicant) v. Stegg Limited (Respondent) *(Withdrawn)*

0856-09-OH: Cindy McGuire (Applicant) v. Woodstock and District Developmental Services (WDDS) (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

2762-06-G: Canadian Union of Skilled Workers (Applicant) v. Siemens Building Technologies Ltd (Respondent) (Dismissed)

2011-07-G: I.B.E.W. Electrical Power Council of Ontario (Applicant) v. Comstock Canada Ltd. (Respondent) v. Electrical Power Systems Construction Association (Intervener) *(Terminated)*

3609-07-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Honeywell Limited cob as Honeywell Building Solutions (Respondent) *(Dismissed)*

1052-08-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. United Shelters Limited o/a Lisgar Construction Company (Respondent) *(Withdrawn)*

3220-08-G; 3368-08-G; 0928-09-G: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yukon Construction Inc. (Respondent) *(Endorsed Settlement)*

3494-08-G: International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Siemens Power Generation a Division of Siemens Canada Ltd. (Respondent) *(Withdrawn)*

3720-08-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. R. Trudel and Fils Inc. (Respondent) *(Withdrawn)*

3760-08-G; 0071-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 221 (Applicant) v. Modern Niagara Ottawa Inc. (Respondent) *(Withdrawn)*

0239-09-G: International Brotherhood of Electrical Workers, Local 303 (Applicant) v. V.K. Mason Construction Co. (Respondent) *(Granted)*

0372-09-G: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Sirron Electrical Contracting Corp. (Respondent) *(Endorsed Settlement)*

0402-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. SOQQVADDRO Airectors Inc. (Respondent) *(Withdrawn)*

0437-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Novak Electric Co. Ltd./N.A.B. Electric Co. Ltd. (Respondent) *(Withdrawn)*

0447-09-G: Canadian Union of Skilled Workers (Applicant) v. Bruce Power LP (Respondent) *(Endorsed Settlement)*

0876-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 593 (Applicant) v. Resource Industrial Group (Respondent) *(Terminated)*

0881-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. Starcon Land Clearing and Forestry Services Inc. (Respondent) *(Granted)*

0882-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. Starcon Land Clearing and Forestry Services Inc. (Respondent) *(Granted)*

0896-09-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Pro Glass Services Inc. (Respondent) *(Granted)*

0911-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Bramalea Ornamental Inc. (Respondent) *(Withdrawn)*

0926-09-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Safeguards of Canada Inc./Safeguards Technology, LLC (Respondent) *(Withdrawn)*

0933-09-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cap Concrete Structures Ltd. and, Domenic Attisano (Respondents) *(Granted)*

0940-09-G: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. Rainbow Glass (Niagara) Inc. (Respondent) *(Granted)*

0950-09-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Casal Metal Ltd. (Respondent) *(Granted)*

0961-09-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Loriano Acoustic Drywall Lathings Inc. (Respondent) *(Granted)*

0973-09-G: Canadian Union of Skilled Workers (Applicant) v. Bruce Power LP (Respondent) *(Terminated)*

0976-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Black & McDonald Limited (Respondent) *(Withdrawn)*

1012-09-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Terrastone Construction Inc. (Respondent) *(Endorsed Settlement)*

1016-09-G: International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Aecon Industrial, Division of Aecon Group Inc. (Respondent) *(Terminated)*

1034-09-G: Brick and Allied Craft Union of Canada, Local 28 (Applicant) v. Central Terrazzo & Tile Co. (Respondent) *(Withdrawn)*

1054-09-G: Labourers' International Union of North America, Local 506 (Applicant) v. Bird Construction (Respondent) *(Withdrawn)*

1060-09-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. El Sauce Interior Ltd. (Respondent) *(Granted)*

1073-09-G: Construction Workers Local 52 Affiliated with Christian Labour Association of Canada (Applicant) v. Kingdom Construction Limited (Respondent) *(Terminated)*

1084-09-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Louis Jones Construction Ltd. (Respondent) *(Endorsed Settlement)*

1078-09-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Mappi Ltd. (Respondent)

1098-09-G: Labourers' International Union of North America, Local 837 (Applicant) v.Ciccarelli Bros. Equipment (Respondent) *(Granted)*

1115-09-G: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Gold Star Stucco Ltd. (Respondent) *(Granted)*

1119-09-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Inex Drywall Limited (Respondent) *(Granted)*

1139-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. 001Enviro Inc. (Respondent) *(Granted)*

1149-09-G: International Union of Elevator Constructors, Local No. 90 (Applicant) v. Otis Canada Inc. (Respondent) *(Withdrawn)*

1153-09-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. JH & Sons Ltd. (Respondent) *(Granted)*

1169-09-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Jacobs Industrial Services Ltd. (Respondent) *(Withdrawn)*

1173-09-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Paul Carcone c.o.b. as Ability Glazing Contractors (Respondent) *(Granted)*

1174-09-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Ian Brindle c.o.b. as Brindle Glass & Mirror (Respondent) *(Granted)*

1196-09-G: Operative Plasterers and Cement Masons International Association of The United States and Canada Local Union No. 124 (Applicant) v. 1288289 Alberta Ltd. (Wild Rose) (Respondent) *(Endorsed Settlement)*

APPEALS - EMPLOYMENT STANDARDS ACT

0159-06-ES,0165-06-ES; 0292-06-ES; 0293-06-ES: Sreeranie Mangal (Applicant) v. Universal Brake Parts Inc. and, Director of Employment Standards (Respondents) *(Granted)* Oduro Antwi (Applicant) v. Universal Brake Parts Inc. and, Director of Employment Standards (Respondents) *(Granted)* Oduro Antwi el at, Jose Adan Molina (Applicants) v. Universal Brake Parts Inc. and, Director of Employment Standards (Respondents) *(Granted)* Hue Gia Nhieu (Applicant) v. Universal Brake Parts Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

2167-06-ES: Todd A. Frankland, a Director of P.P.I. Structures Inc. (Applicant) v. Andrew Adair, Emmanuel Bada, Robert Bartley, Eric Blundon, Dominic Boodan, Ronald Boone, Kevin Burroughs, Erin Campioni, Mario Chagas, Nuno Chagas, Bradley Christian, Barry Cook, Sydney Crocker, Eddie Croft, Darlene Davis, Ronald Decoteau, Jorge Luis Del Marmol, Jacob Dielschneider, Barbra Dimunno, Michael Dolan, Derl Donnell, George Esson, Russ Ewing, Dennis Fast, Dave Feuerherdt, Richard Firang, Grant J. Gallant, Oscar Garcia, Anna Guinci, Sterling Helman, Kirby Hoskins, Mitchell R. Humphries, Richard Isaac, Christopher Josephs, Ron Jewitt, Bruce Kean, Justin King, Trevor Knight, John P. Kotakowski, Robert Brian Lavictoire, Craig Leblanc, Domenic Logozzo, Vince Luckesse, Nash Maalouf, Bob Martin,Trevor McDonald, Sean McRae, Jameel Mohammed, Shareen Nava, Andrew Norris, John P O'Neil, Earl Parson, Curtis M Payne, Willis Payne, Deodutt Persaud, Philip Poxon, Blair Rice, Ryan Rocha, Frank Romita, Frank Rumble, Trevor Schaump, Shyam Shiwdin, Brian Simson, Micczyslaw Smolak, Davis Soogrim, Darren Spurrell, Vanessa (Jordana) St. Pierre, Christopher Stagg, Keith L. Stagg, Kevin L. Stagg, Robert Steward, Wilfred Stokes, Sean Strickland, Assal Tarck, Azmat Syed Ullah, Steven Vann, Andres Vargas, Fredy Vasquez, Peter Watt, Emily Wiens, William Willis, Adam Wylie, and, Director of Employment Standards (Respondents) *(Granted)*

3779-06-ES: Accu-Staff Resources Systems Ltd. (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

1026-07-ES: Highline Produce Limited, Wellington Mushroom Farm (Applicant) v. Tammy Flieler, and, Director of Employment Standards (Respondents) v. Ontario Federation of Agriculture (Intervener) *(Granted)*

1152-07-ES: Norman Sobel, A Director of Decor Manufacturing (2001) Inc. (Applicant) v. Caterina Anite, Maria Anile, Hirtz Bereber, Maria Blusi, Geoth Burgos, Loreto Cergua, Jiaziong Chen, My Duong, Elizabeth Fanone, Mario

Guillen, Marjorie Guillen, Jane Lawrence, Lien Le, Li Li, A. Liu, Lizhao, Han Ming, Cliff Newsome, G. Pacitti, Trushina Patel, Xuyen Pham, Wei Qu, Teresa Staszewska, Stuart Sugar, Doris Tahares, Jennifer Van Damme, Jing Wang, Marcel Weinberger, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2194-07-ES: Clifford Cann (Applicant) v. Helpfast Personnel Inc. Director of Employment Standards (Respondents) *(Dismissed)*

2716-07-ES: Pamela Huber (Applicant) v. MGH Holding Ltd. o/a Thrifty Car & Truck Rental, Director of Employment Standards (Respondents) *(Dismissed)*

2744-07-ES; 2745-07-ES: Bernardino Falotico, Director of Mr. Fine Food (2004) Inc. (Applicant) v. Rosa Falcitelli, Rosa Policano, Jovencio B. Rodrigo and, Director of Employment Standards (Respondents) *(Endorsed Settlement)* Michele Tersigni, Director of Mr. Fine Food (2004) Inc. (Applicant) v. Rosa Falcitelli, Rosa Policano, Jovencio B. Rodrigo and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0664-08-ES: Oscar Mera (Applicant) v. Bathtub King Refinishing Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1607-08-ES: Commissionaires (Great Lakes) (Applicant) v. S. Kaushik, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2044-08-ES: Rashpal Bining (Applicant) v. 1391165 Ontario Inc. o/a Wallace Transport and, Director of Employment Standards (Respondents) *(Dismissed)*

2389-08-ES: David Hay Limited o/a Town Auto Body (Applicant) v. Diego Cardenas and, Director of Employment Standards (Respondents) *(Dismissed)*

2922-08-ES: Leo Patrick McElhone, a Director of Contran Manufacturing (1982) Limited (Applicant) v. Wayne Martin, Robert Rose, Michael Lewis, Michael Langford, Kyle Tallman, Mark Leeper, Ron Pellerin, Lee Grant, Michael Cripps, Barbara Calvert, Sandy Martin, Ian Vella, Teresa Castillo, John DeBeck and, Director of Employment Standards, Matthew Maynard (Respondents) *(Granted)*

3255-08-ES: Raouf Barakat (Applicant) v. Inter-Cultural Neighbourhood Social Services and, Director of Employment Standards (Respondents) *(Granted)*

3426-08-ES: Sherry L. Jack (Applicant) v. AZ Automotive Corp. and, Director of Employment Standards (Respondents) *(Dismissed)*

3474-08-ES: Bryan Sher Chiropractic Professional Corporation (Applicant) v. Sigrun Frey and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3654-08-ES: Susan Gray (Applicant) v. Springfield Hotels Airport Inc. operating as Hampton Inn & Suites Toronto Airport, Director of Employment Standards (Respondents) *(Dismissed)*

3693-08-ES: Sabin's Hair Fashions Limited (Applicant) v. Nawal Ayache and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3743-08-ES: Sleep Clinic Kitchener Inc. (Applicant) v. Lauren King and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3748-08-ES: Andrew Cormier (Applicant) v. Read Saw Cutting & Coring Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0018-09-ES: Frank Beletz (Applicant) v. The Roberts Group Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0059-09-ES: Vincent Salon and Spa (Applicant) v. Sonya McIlravey, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0160-09-ES: Powder Coaters Inc. (Applicant) v. Patsie Muirhead and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0199-09-ES: All-Round Truck and Auto Care Inc. (Applicant) v. Craig Smith, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0204-09-ES: Daniel Alexander (Applicant) v. L & G General Auto Body Limited, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0213-09-ES: Robert Dussault (Applicant) v. Antonio Tremblay Contracting Limited and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0231-09-ES: 962556 Ontario Limited o/a Bilingual Source (Applicant) v. Darin McLean and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0245-09-ES: Paraneetharan Shanmugasundaram (Applicant) v. K-Line Insulators Limited and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0252-09-ES: Sheehan's Truck Centre Inc. (Applicant) v. David Leech and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0289-09-ES: G&S Totaram Inc. o/a J&K West Indian Cuisine (Applicant) v. Chuk Shing Yeung and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0301-09-ES: Asmar Foods Inc. o/a Harvey's Restaurant (Applicant) v. Louisa Godin and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0305-09-ES: Shiv Ram Goel and Meenakshi Goel Directors of Vision Technologies & Services Inc. (Applicant) v. Umesh Shetty and, Director of Employment Standards (Respondents) (Endorsed Settlement)

0323-09-ES: Kim Vivian-Downs (Applicant) v. Charlene Buchan and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0333-09-ES: Dean Hale (Applicant) v. 2135396 Ontario Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

0351-09-ES: Matthews Equipment Limited c.o.b. Hertz Equipment Rental ("Hertz") (Applicant) v. Ron Jackson, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0389-09-ES: Andrew Mitchell (Applicant) v. Athlete's Olympic Village, and Director of Employment Standards (Respondent) *(Terminated)*

0398-09-ES: Trillium Pontiac Buick GMC Ltd. (Applicant) v. Jennifer Hurdman and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0482-09-ES: C.C.D. Group Inc. (Applicant) v. Jennifer Norris and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0493-09-ES: Presteve Foods Limited (Applicant) v. Anna L. Dyck and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0557-09-ES: Invest Hotels GP Ltd o/a Owen Sound Comfort Inn (Applicant) v. Sarah Morris, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0592-09-ES: Vince Lehecka (Applicant) v. Ikon Office Solutions Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0595-09-ES: 0596-09-ES: 0597-09-ES: 1669740 Ontario Inc. o/a Grandads Donuts (Applicant) v. Donna Lincoln and, Director of Employment Standards (Respondents) *(Dismissed)*

0605-09-ES: The Insurers Financial Group Inc. (Applicant) v. Lisa Jeffery and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0640-09-ES: Ryszard Dabrowski (Applicant) v. Viceroy Rubber and Plastics Limited and, Director of Employment Standards (Respondents) *(Dismissed)*

0701-09-ES: Bik Hydraulics Ltd. (Applicant) v. Kenneth Michael Jones and, Director of Employment Standards (Respondents) *(Dismissed)*

0707-09-ES: Peace of Mind Caregivers Inc. o/a Home Instead Senior Care (Applicant) v. Hyacinth Rapley and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0729-09-ES: Janet Greeley (Applicant) v. Saint Elizabeth Health Care and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0758-09-ES: Ahmad Abdul-Hamid o/a Funhouse (Applicant) v. Kelly Corkum and, Director of Employment Standards (Respondents) *(Terminated)*

0803-09-ES: Marisol Simoes (Applicant) v. Diego Restrepo, and, Director of Employment Standards (Respondents) *(Terminated)*

0806-09-ES: Woodlawn Inc. (Applicant) v. Johnathan Groleau and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0808-09-ES: Mohamed Mohamed o/a King Kitchens and Cabinets (Applicant) v. Nick Bezecny and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0845-09-ES: Island Grove Roti & Bar Inc. (Applicant) v. Ji Zhang Xu, and, Director of Employment Standards (Respondents) *(Terminated)*

0862-09-ES: Hugh Hall (Applicant) v. Mariano Rodriguez, and, Director of Employment Standards (Respondents) *(Terminated)*

0892-09-ES: Navona Realty Services Inc. (Applicant) v. Mary Mikac and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0893-09-ES: Navona Realty Services Inc. (Applicant) v. Tony Mikac and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0932-09-ES: Lighting 4 Less Ltd. (Applicant) v. Ruth Davidson and, Director of Employment Standards (Respondents) *(Dismissed)*

0943-09-ES: Shooters Sports Bar Inc. (Applicant) v. Shauna Hickey and, Director of Employment Standards (Respondents) *(Dismissed)*

1000-09-ES: 880463 Ontario Inc. o/a Burlington Auto Service Ltd. (Applicant) v. Jeff Deveaux and, Director of Employment Standards (Respondents) *(Terminated)*

1019-09-ES: Rocco Guarino (Applicant) v. Engine Control Systems Ltd. and, Director of Employment Standards (Respondents) *(Terminated)*

1036-09-ES: Carlos Estrada Mejia (Applicant) v. Tycorra Investments Inc. o/a Wabash Canada and, Director of Employment Standards (Respondents) *(Dismissed)*

1247-09-ES: Ernesto Pozas (Applicant) v. Valentino Sokolov c.o.b. as Rainbow Stucco Systems and, Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

2353-04-HS: John Boychuk (Applicant) v. Lou Parco, Inspector, Hamilton-Wentworth Detention Centre (Respondents) *(Dismissed)*

2552-07-HS: B. Gottardo Construction Ltd. (Applicant) v. International Union of Operating Engineers Local 793 and, Rick Bottineau, Inspector (Respondents) *(Withdrawn)*

0657-08-HS: Lennox Drum Limited (Applicant) v. Joey Ouimet and, Joseph Ah-Hone, Inspector (Respondents) *(Dismissed)* **0112-09-HS:** Lennox Drum Limited (Applicant) v. Joey Ouimet and, Ronald Landry, Inspector (Respondents) *(Terminated)*

3402-08-HS: Bravo Cement Contracting (Windsor) Inc. (Applicant) v. Nela Radakovic Karanovic Sergio Fregonese and, Barry Norton, Inspector (Respondents) *(Dismissed)*

3664-08-HS: Strabag Inc. (Applicant) v. Labourers' International Union of North America, Local 837, Jullie Ritchie, Inspector (Respondents) *(Terminated)*

0663-09-HS: Pro Insul Limited (Applicant) v. International Association Heat & Frost Insulators Local 95 (Ontario) and, Paul Malboeuf, Inspector (Respondents) *(Withdrawn)*

0916-09-HS: KML Food and Confectionery Limited (Applicant) v. Debbie Jeans, Inspector (Respondent) *(Dismissed)*

APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT

1008-09-M: Victor Pak (Applicant) v. City of Toronto, Toronto Emergency Medical Services (Respondent) v. Canadian Union of Public Employees, Local 79 (Intervener) *(Dismissed)*

PAY EQUITY ACT

0559-08-PE: Ontario Secondary School Teachers' Federation representing the EA/OCT/CYW Bargaining Unit (Applicant) v. Brant Haldimand-Norfolk Catholic District School Board (Respondent) *(Granted)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

0550-08-PS;) 0637-08-PS:: Ontario Public Service Employees Union (Applicant) v. North Bay General Hospital; Northeast Mental Health Centre;, Canadian Union of Public Employees; Ontario Nurses Association; and Service Employees International Union (Respondents); North Bay General Hospital ("NBGH") (Applicant) v. Northeast Mental Health Centre ("NEMHC"), Ontario Public Service Employees Union Local ("OPSEU Local 636"), Ontario Nurses' Association ("ONA"), Canadian Union of Public Employees, Local 139 ("CUPE Local 139"), Service Employees International Union, Local 1.ON ("SEIU Local 1.ON"), Ontario Public Service Employees Union Local 662 ("OPSEU Local 662"), Ontario Public Service Employees Union Local 666 ("OPSEU Local 666") (Respondents) *(Granted)*

REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

3015-08-M: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Chartwell Seniors Housing REIT c.o.b. Glacier Ridge Retirement Residence (Respondent) *(Terminated)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1307-07-R: Communications, Energy and Paperworkers Union of Canada (CEP) (Applicant) v. GreenField Ethanol Inc. (Respondent) *(Withdrawn)*

0958-08-ES: Kamal Surana (Applicant) v. Medical Technology Institute (MTI), and, Director of Employment Standards (Respondents) *(Dismissed)*

3304-08-ES: Charles S. Yanover (Applicant) v. Cataraqui Cemetery and, Director of Employment Standards (Respondents) *(Dismissed)*

3356-08-ES: Stephanie Begin (Applicant) v. Hong Guo operating as Roseand Thorne 111 and, Director of Employment Standards (Respondents) *(Dismissed)*

3594-08-ES; 3619-08-ES: Weiguang Wu (Applicant) v. Great Connections Employment Services Inc. and, Director of Employment Standards (Respondents) *(Granted)* Hai-Dih (Jack) Wang (Applicant) v. Great Connections Employment Services Inc. and, Director of Employment Standards (Respondents) *(Granted)*

3753-08-U: Abbas Sadaghyani (Applicant) v. Ontario Public Service Employees Union, Local 444 (Respondent) v. The Board of Governors of the Kingston Hospital (Intervener) *(Dismissed)*

0496-09-R: Eric Paradis (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council, on its own behalf and on behalf of all other affiliated bargaining agents (Respondent) v. White Contracting Ltd. (Intervener) *(Dismissed)*

0818-09-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. L & A Ltd. (Respondent) *(Granted)*

0890-09-R: International Union of Operating Engineers, Local 793 (Applicant) v. 1478687 Ontario Ltd. (Respondent) *(Dismissed)*

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